

SENATE BILL No. 138

March 17, 1987, Introduced by Senators NICHOLS, KELLY, DINGELL, WELBORN, FAUST, BARCIA, FAXON, CROPSEY, DI NELLO, FREDRICKS, SCHWARZ, CHERRY, SHINKLE, MILLER, IRWIN, GEO. HART, DILLINGHAM, GEAKE, SMITH, DE GROW, ENGLER, CRUCE, POLLACK, J. HART, HOLMES, VAUGHN, FESSLER and O'BRIEN and referred to the Committee on Judiciary.

A bill to amend sections 33, 33b, 34, and 35 of Act No. 232 of the Public Acts of 1953, entitled as amended

"An act to revise, consolidate, and codify the laws relating to probationers and probation officers as herein defined, to pardons, reprieves, commutations, and paroles, to the administration of penal institutions, correctional farms, and probation recovery camps, to prison labor and prison industries, and 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 hereby transferred; to provide for the creation of a local lockup advisory board; to prescribe penalties for the violation of the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act,"

sections 33 and 33b as amended by Act No. 458 of the Public Acts of 1982, section 34 as amended by Act No. 314 of the Public Acts of 1982, and section 35 as amended by Act No. 414 of the Public

Acts of 1984, being sections 791.233, 791.233b, 791.234, and 791.235 of the Michigan Compiled Laws; and to add section 33c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 33, 33b, 34, and 35 of Act No. 232 of
2 the Public Acts of 1953, sections 33 and 33b as amended by Act
3 No. 458 of the Public Acts of 1982, section 34 as amended by Act
4 No. 314 of the Public Acts of 1982, and section 35 as amended by
5 Act No. 414 of the Public Acts of 1984, being sections 791.233,
6 791.233b, 791.234, and 791.235 of the Michigan Compiled Laws, are
7 amended and section 33c is added to read as follows:

8 Sec. 33. (1) The grant of a parole shall be subject to all
9 of the following:

10 (a) A prisoner shall not be given his OR HER liberty on
11 parole until the board has reasonable assurance, after considera-
12 tion of all of the facts and circumstances, including the
13 prisoner's mental and social attitude, that the prisoner will not
14 become a menace to society or to the public safety.

15 (b) ~~-A-~~ EXCEPT AS PROVIDED IN SECTION 33C, A parole shall
16 not be granted to a prisoner until the prisoner has served the
17 minimum term imposed by the court less allowances for good time
18 or special good time to which the prisoner may be entitled ~~to~~
19 by statute, except that prisoners shall be eligible for parole
20 prior to the expiration of their minimum terms of imprisonment
21 whenever the sentencing judge, or the judge's successor in
22 office, gives written approval of the parole of the prisoner
23 prior to the expiration of the minimum terms of imprisonment.

1 (c) Notwithstanding the provisions of subdivision (b), a
2 parole shall not be granted to a prisoner sentenced for the
3 commission of a crime described in section 33b(a) to (cc) until
4 the prisoner has served the minimum term imposed by the court
5 less an allowance for disciplinary credits as provided in
6 section ~~33(5)~~ 33 of Act No. 118 of the Public Acts of 1893,
7 being section 800.33 of the Michigan Compiled Laws. A prisoner
8 described in this subdivision is not eligible for special
9 parole. THIS SUBDIVISION SHALL NOT APPLY TO JUVENILES FOUND TO
10 BE REHABILITATED UNDER SECTION 33C.

11 (d) A prisoner shall not be released on parole until the
12 parole board has satisfactory evidence that arrangements have
13 been made for such honorable and useful employment as the pris-
14 oner is capable of performing, or FOR the prisoner's education,
15 or for the prisoner's care if the prisoner is mentally or physi-
16 cally ill or incapacitated.

17 (e) If a prisoner is serving a sentence for a crime commit-
18 ted during the time the prisoner was on parole due to a reduction
19 of a previous prison term under the prison overcrowding emergency
20 powers act, Act No. 519 of the Public Acts of 1980, being sec-
21 tions 800.71 to 800.79 of the Michigan Compiled Laws, that pris-
22 oner shall not be released on parole due to a reduction in the
23 prisoner's minimum term under the prison overcrowding emergency
24 powers act, Act No. 519 of the Public Acts of 1980.

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

1 provided an accredited agent of the agency filing the warrant
2 shall call for the prisoner so paroled in custody.

3 (3) Pursuant to THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
4 Act No. 306 of the Public Acts of 1969, as amended, being sec-
5 tions 24.201 to ~~24.315~~ 24.328 of the Michigan Compiled Laws,
6 the parole board may promulgate rules not inconsistent with this
7 act with respect to conditions to be imposed upon paroled prison-
8 ers paroled under this act.

9 Sec. 33b. ~~A~~ EXCEPT AS PROVIDED IN SECTION 33C, A person
10 convicted and sentenced for the commission of any of the follow-
11 ing crimes shall not be eligible for parole until the person has
12 served the minimum term imposed by the court less an allowance
13 for disciplinary credits as provided in section ~~33(5)~~ 33 of Act
14 No. 118 of the Public Acts of 1893, being section 800.33 of the
15 Michigan Compiled Laws, but shall not be eligible for special
16 parole:

17 (a) Section 13 of THE MICHIGAN PENAL CODE, Act No. 328 of
18 the Public Acts of 1931, as amended, being section 750.13 of the
19 Michigan Compiled Laws.

20 (b) Section 14 of Act No. 328 of the Public Acts of 1931, as
21 amended, being section 750.14 of the Michigan Compiled Laws.

22 (c) Section 72, 73, or 75 of Act No. 328 of the Public Acts
23 of 1931, as amended, being ~~section~~ SECTIONS 750.72, 750.73,
24 ~~or~~ AND 750.75 of the Michigan Compiled Laws.

25 (d) Section 80, 82, 83, 84, ~~85~~, 86, 87, 88, 89, or 90 of
26 Act No. 328 of the Public Acts of 1931, as amended, being
27 ~~section~~ SECTIONS 750.80, 750.82, 750.83, 750.84, ~~750.85~~,

1 750.86, 750.87, 750.88, 750.89, ~~or~~ AND 750.90 of the Michigan
2 Compiled Laws, AND FORMER SECTION 85 OF ACT NO. 328 OF THE PUBLIC
3 ACTS OF 1931.

4 (e) Section 91 or 92 of Act No. 328 of the Public Acts of
5 1931, as amended, being ~~section~~ SECTIONS 750.91 ~~or~~ AND 750.92
6 of the Michigan Compiled Laws.

7 (f) Section 110, 112, or 116 of Act No. 328 of the Public
8 Acts of 1931, as amended, being ~~section~~ SECTIONS 750.110,
9 750.112, ~~or~~ AND 750.116 of the Michigan Compiled Laws.

10 (g) Section 135 or 136a of Act No. 328 of the Public Acts of
11 1931, as amended, being ~~section~~ SECTIONS 750.135 ~~or~~ AND
12 750.136a of the Michigan Compiled Laws.

13 (h) Section 158 of Act No. 328 of the Public Acts of 1931,
14 as amended, being section 750.158 of the Michigan Compiled Laws.

15 (i) Section 160 of Act No. 328 of the Public Acts of 1931,
16 as amended, being section 750.160 of the Michigan Compiled Laws.

17 (j) Section 171 of Act No. 328 of the Public Acts of 1931,
18 as amended, being section 750.171 of the Michigan Compiled Laws.

19 (k) Section ~~194 or~~ 196 of Act No. 328 of the Public Acts
20 of 1931, as amended, being section ~~750.194 or~~ 750.196 of the
21 Michigan Compiled Laws, AND FORMER SECTION 194 OF ACT NO. 328 OF
22 THE PUBLIC ACTS OF 1931.

23 (l) Section 204, 205, 206, 207, 208, 209, or 213 of Act
24 No. 328 of the Public Acts of 1931, as amended, being ~~section~~
25 SECTIONS 750.204, 750.205, 750.206, 750.207, 750.208, 750.209,
26 ~~or~~ AND 750.213 of the Michigan Compiled Laws.

1 (m) Section 224, 226, or 227 of Act No. 328 of the Public
2 Acts of 1931, as amended, being ~~section~~ SECTIONS 750.224,
3 750.226, ~~or~~ AND 750.227 of the Michigan Compiled Laws.

4 (n) Section 316, 317, 319, 321, 322, 323, 327, 328, or 329
5 of Act No. 328 of the Public Acts of 1931, as amended, being
6 ~~section~~ SECTIONS 750.316, 750.317, 750.319, 750.321, 750.322,
7 750.323, 750.327, 750.328, ~~or~~ AND 750.329 of the Michigan
8 Compiled Laws.

9 (o) ~~Section~~ FORMER SECTION 333 of Act No. 328 of the
10 Public Acts of 1931. ~~, as amended, being section 750.333 of the~~
11 ~~Michigan Compiled Laws.~~

12 (p) Section 338, 338a, OR 338b ~~, or 341~~ of Act No. 328 of
13 the Public Acts of 1931, as amended, being ~~section~~ SECTIONS
14 750.338, 750.338a, AND 750.338b ~~, or 750.341~~ of the Michigan
15 Compiled Laws, AND FORMER SECTION 341 OF ACT NO. 328 OF THE
16 PUBLIC ACTS OF 1931.

17 (q) Section 349, 349a, or 350 of Act No. 328 of the Public
18 Acts of 1931, as amended, being ~~section~~ SECTIONS 750.349,
19 750.349a, ~~or~~ AND 750.350 of the Michigan Compiled Laws.

20 (r) Section 357 of Act No. 328 of the Public Acts of 1931,
21 as amended, being section 750.357 of the Michigan Compiled Laws.

22 (s) Section 386 or 392 of Act No. 328 of the Public Acts of
23 1931, as amended, being ~~section~~ SECTIONS 750.386 ~~or~~ AND
24 750.392 of the Michigan Compiled Laws.

25 (t) Section 397 or 397a of Act No. 328 of the Public Acts of
26 1931, as amended, being ~~section~~ SECTIONS 750.397 ~~or~~ AND
27 750.397a of the Michigan Compiled Laws.

1 (u) Section 436 of Act No. 328 of the Public Acts of 1931,
2 as amended, being section 750.436 of the Michigan Compiled Laws.

3 (v) Section 511 or 517 of Act No. 328 of the Public Acts of
4 1931, as amended, being ~~section~~ SECTIONS 750.511 ~~or~~ AND
5 750.517 of the Michigan Compiled Laws.

6 (w) Section 520b, 520c, 520d, or 520g of Act No. 328 of the
7 Public Acts of 1931, as amended, being ~~section~~ SECTIONS
8 750.520b, 750.520c, 750.520d, ~~or~~ AND 750.520g of the Michigan
9 Compiled Laws.

10 (x) Section 529, 530, or 531 of Act No. 328 of the Public
11 Acts of 1931, as amended, being ~~section~~ SECTIONS 750.529,
12 750.530, ~~or~~ AND 750.531 of the Michigan Compiled Laws.

13 (y) Section 544 ~~or 545a~~ of Act No. 328 of the Public Acts
14 of 1931, as amended, being section 750.544 ~~or 750.545a~~ of the
15 Michigan Compiled Laws, AND FORMER SECTION 545A OF ACT NO. 328 OF
16 THE PUBLIC ACTS OF 1931.

17 (z) Section 2 of FORMER Act No. 38 of the Public Acts of THE
18 EXTRA SESSION OF 1950. ~~Ex. Sess., as amended, being section~~
19 ~~752.312 of the Michigan Compiled Laws.~~

20 (aa) Section 6 of FORMER Act No. 117 of the Public Acts of
21 1952. ~~, as amended, being section 752.326 of the Michigan~~
22 ~~Compiled Laws.~~

23 (bb) Section 1, 2, 3, or 4 of Act No. 302 of the Public Acts
24 of 1968, as amended, being ~~section~~ SECTIONS 752.541, 752.542,
25 752.543, ~~or~~ AND 752.544 of the Michigan Compiled Laws.

26 (cc) Section 7401(2)(a), 7401(2)(b), 7402(2)(a), or
27 7402(2)(b) of Act No. 368 of the Public Acts of 1978, being

1 ~~section~~ SECTIONS 333.7401 ~~or~~ AND 333.7402 of the Michigan
2 Compiled Laws.

3 SEC. 33C. (1) IF A JUVENILE UNDER THE AGE OF 17 YEARS IS
4 WAIVED TO A COURT HAVING GENERAL CRIMINAL JURISDICTION PURSUANT
5 TO SECTION 4 OF CHAPTER XIIA OF ACT NO. 288 OF THE PUBLIC ACTS OF
6 1939, BEING SECTION 712A.4 OF THE MICHIGAN COMPILED LAWS, AND IS
7 CONVICTED OF A FELONY AND SENTENCED TO A TERM OF YEARS IN CON-
8 FINEMENT, THE JUVENILE SHALL BE COMMITTED TO THE DEPARTMENT OF
9 CORRECTIONS FOR PLACEMENT IN A SEPARATE FACILITY FOR JUVENILES
10 UNTIL THE JUVENILE BECOMES 19 YEARS OF AGE. WHEN THE JUVENILE
11 BECOMES 19 YEARS OF AGE, THE JUVENILE SHALL HAVE THE RIGHT TO
12 REVIEW BY THE PAROLE BOARD FOR A DETERMINATION OF
13 REHABILITATION.

14 (2) AT THE HEARING ON THE DETERMINATION OF REHABILITATION,
15 THE PAROLE BOARD SHALL CONSIDER THE FOLLOWING CRITERIA:

16 (A) THE PRIOR RECORD AND CHARACTER OF THE JUVENILE AND HIS
17 OR HER MENTAL MATURITY.

18 (B) THE SERIOUSNESS AND CIRCUMSTANCES OF THE OFFENSE.

19 (C) WHETHER THE OFFENSE WAS PART OF A REPETITIVE PATTERN OF
20 OFFENSES WHICH WOULD LEAD TO A DETERMINATION THAT THE JUVENILE IS
21 BEYOND REHABILITATION.

22 (D) WHETHER IT IS IN THE BEST INTERESTS OF THE PUBLIC WEL-
23 FARE AND THE PROTECTION OF THE PUBLIC SECURITY THAT THE JUVENILE
24 BE RELEASED.

25 (E) WHETHER THE JUVENILE IS READY FOR RELEASE. IN MAKING A
26 DETERMINATION UNDER THIS SUBDIVISION, THE FOLLOWING CRITERIA
27 SHALL BE CONSIDERED:

1 (i) THE LEVEL OF RESPONSIBILITY OF DECISIONS THE JUVENILE IS
2 MAKING ON A DAY-TO-DAY BASIS.

3 (ii) THE DEGREE TO WHICH THE JUVENILE IS VIEWING HIMSELF OR
4 HERSELF IN A POSITIVE WAY.

5 (iii) THE DEGREE TO WHICH THE JUVENILE IS SHOWING CONCERN
6 FOR OTHER PEOPLE.

7 (iv) THE EDUCATIONAL AND CAREER PLANNING INVESTMENT OF THE
8 JUVENILE.

9 (v) THE DEGREE TO WHICH THE JUVENILE HAS ABANDONED OR
10 RETAINED IDENTIFICATION WITH DELINQUENT VALUES.

11 (vi) THE STRENGTH OF THE PLACEMENT RESOURCE FOR THE
12 JUVENILE.

13 (3) IF THE PAROLE BOARD MAKES A FINDING OF REHABILITATION,
14 THE JUVENILE SHALL BE SUBJECT TO PAROLE. IF THE PAROLE BOARD
15 FINDS THAT THE JUVENILE IS NOT REHABILITATED, THE JUVENILE SHALL
16 BE TRANSFERRED BY THE DEPARTMENT OF CORRECTIONS FOR PLACEMENT FOR
17 THE REMAINDER OF THE SENTENCE.

18 Sec. 34. (1) ~~A~~ EXCEPT AS PROVIDED IN SECTION 33C, A pris-
19 oner sentenced to an indeterminate sentence and confined in a
20 state prison or reformatory with a minimum in terms of years
21 shall be subject to the jurisdiction of the parole board when the
22 prisoner has served a period of time equal to the minimum sen-
23 tence imposed by the court for the crime of which he or she was
24 convicted, less good time allowances, if applicable.

25 (2) ~~If~~ EXCEPT AS PROVIDED IN SECTION 33C, IF a prisoner is
26 sentenced for consecutive terms, whether received at the same
27 time or at any time during the life of the original sentence, the

1 parole board shall have jurisdiction over the prisoner for
2 purposes of parole when the prisoner has served the total time of
3 the added minimum terms, less the good time credit allowed by
4 statute. The maximum terms of the sentences shall be added to
5 compute the new maximum term under this subsection, and discharge
6 shall be issued only after the total of the maximum sentences has
7 been served less good time allowances, unless the prisoner is
8 paroled and discharged upon satisfactory completion of the
9 parole.

10 (3) ~~IF~~ EXCEPT AS PROVIDED IN SECTION 33C, IF a prisoner
11 has 1 or more consecutive terms remaining to serve in addition to
12 the term he or she is serving, the parole board may terminate the
13 sentence the prisoner is presently serving at any time after the
14 minimum term of the sentence has been served.

15 (4) ~~A~~ EXCEPT AS PROVIDED IN SECTION 33C, A prisoner under
16 sentence for life or for a term of years, other than prisoners
17 sentenced for life for murder in the first degree and prisoners
18 sentenced for life or for a minimum term of imprisonment for a
19 major controlled substance offense, who has served 10 calendar
20 years of the sentence is subject to the jurisdiction of the
21 parole board and may be released on parole by the parole board,
22 subject to the following conditions:

23 (a) One member of the parole board shall interview the pris-
24 oner at the conclusion of 4 calendar years of the sentence and
25 biennially thereafter until such time as the prisoner is paroled,
26 discharged, or deceased.

1 (b) A parole shall not be granted a prisoner so sentenced
2 until after a public hearing held in the manner prescribed for
3 pardons and commutations in sections 44(d) to ~~44(f)~~ (F) and
4 45. Notice of the public hearing shall be given to the sentenc-
5 ing judge, or the judge's successor in office, and parole shall
6 not be granted if the sentencing judge, or the judge's successor
7 in office, files written objections to the granting of the parole
8 within 30 days of receipt of the notice of hearing. The written
9 objections shall be made part of the prisoner's file.

10 (c) A parole granted under this subsection shall be for a
11 period of not less than 4 years and subject to the usual rules
12 pertaining to paroles granted by the parole board. A parole
13 ordered under this subsection shall not become valid until the
14 transcript of the record is filed with the attorney general whose
15 certification of receipt of the transcript shall be returnable to
16 the office of the parole board within 5 days. Except for medical
17 records protected by section 2157 of THE REVISED JUDICATURE ACT
18 OF 1961, Act No. 236 of the Public Acts of 1961, being section
19 600.2157 of the Michigan Compiled Laws, the file of a prisoner
20 granted a parole under this subsection shall be a public record.

21 (d) A parole shall not be granted under this subsection in
22 the case of a prisoner who is otherwise prohibited by law from
23 parole consideration. In such cases the interview procedures in
24 section 44 shall be followed.

25 (5) The time of a prisoner's release on parole shall be dis-
26 cretionary with the parole board. The action of the parole board

1 in granting or denying a parole shall be appealable to the
2 circuit court by leave of the court.

3 Sec. 35. (1) The release of a prisoner on parole shall be
4 granted solely upon the initiative of the parole board. The
5 parole board may grant a parole without interviewing a prisoner.
6 A prisoner shall not be denied parole without an interview before
7 1 member of the parole board. ~~The~~ EXCEPT AS PROVIDED IN
8 SECTION 33C, THE interview shall be conducted at least 1 month
9 before the expiration of the prisoner's minimum sentence less
10 good time allowances. The parole board shall not consider any of
11 the following factors in making a parole determination:

12 (a) A juvenile record which a court has ordered the depart-
13 ment to expunge.

14 (b) Information that is determined by the parole board to be
15 inaccurate or irrelevant after a challenge and presentation of
16 relevant evidence by a prisoner who has received a notice of
17 intent to conduct an interview as provided in subsection (3).
18 This subdivision shall only apply to presentence investigation
19 reports prepared prior to April 1, 1983.

20 (2) The parole board may consider, but shall not base a
21 determination to deny parole solely on:

22 (a) A prisoner's marital history.

23 (b) Prior arrests not resulting in conviction or adjudica-
24 tion of delinquency.

25 (3) If an interview is to be conducted, the prisoner shall
26 be sent a notice of intent to conduct an interview at least 1
27 month before the date of the interview. The notice shall state

1 the specific issues and concerns which shall be discussed at the
2 interview and which may be a basis for a denial of parole. A
3 denial of parole shall not be based on reasons other than those
4 stated in the notice of intent to conduct an interview except for
5 good cause stated to the prisoner at or before the interview and
6 in the written explanation required by subsection (10). This
7 subsection shall not apply until April 1, 1983.

8 (4) Except for good cause, the parole board member conduct-
9 ing the interview shall not have cast a vote for or against the
10 prisoner's release prior to conducting the current interview.
11 The parole board member conducting the interview shall review
12 pertinent information relative to the notice of intent to conduct
13 an interview before the interview.

14 (5) A prisoner may waive the right to an interview by 1
15 member of the parole board. The waiver of the right to be inter-
16 viewed shall be given not more than 30 days after the notice of
17 intent to conduct an interview is issued and shall be made in
18 writing. During the interview held pursuant to a notice of
19 intent to conduct an interview, the prisoner may be represented
20 by an individual of his or her choice. The representative shall
21 not be another prisoner or an attorney. A prisoner is not enti-
22 tled to appointed counsel at public expense. The prisoner or
23 representative may present relevant evidence in support of
24 release. This subsection shall not apply until April 1, 1983.

25 (6) At least 90 days before the expiration of the prisoner's
26 minimum sentence ~~—~~ or the expiration of a 12-month continuance,
27 OR, FOR A REHABILITATION HEARING UNDER SECTION 33C, AT LEAST 90

1 DAYS BEFORE A JUVENILE BECOMES 19 YEARS OF AGE, a parole
2 eligibility report shall be prepared by appropriate institutional
3 staff. The parole eligibility report shall be considered perti-
4 nent information for purposes of subsection (4). The report
5 shall include:

6 (a) A statement of all major misconduct charges of which the
7 prisoner was found guilty and the punishment served for the
8 misconduct.

9 (b) The prisoner's work and educational record while
10 confined.

11 (c) The results of any physical, mental, or psychiatric
12 examinations of the prisoner that may have been performed.

13 (d) Whether the prisoner fully cooperated with the state by
14 providing complete financial information as required under sec-
15 tion ~~3A~~ 3A of THE STATE CORRECTIONAL FACILITY REIMBURSEMENT
16 ACT, Act No. 253 of the Public Acts of 1935, being
17 section ~~800.403A~~ 800.403A of the Michigan Compiled Laws.

18 (7) The preparer of the report shall not include a recommen-
19 dation as to release on parole.

20 (8) Psychological evaluations performed at the request of
21 the parole board to assist it in reaching a decision on the
22 release of a prisoner may be performed by the same person who
23 provided the prisoner with therapeutic treatment, unless a dif-
24 ferent person is requested by the prisoner or parole board.

25 (9) The parole board may grant a medical parole for a pris-
26 oner determined to be physically or mentally incapacitated. A
27 decision to grant a medical parole shall be initiated upon the

1 recommendation of the office of health care and shall be reached
2 only after a review of the medical, institutional, and criminal
3 records of the prisoner.

4 (10) When the parole board makes a final determination not
5 to release a prisoner, the prisoner shall be provided with a
6 written explanation of the reason for denial and, if appropriate,
7 specific recommendations for corrective action the prisoner may
8 take to facilitate release.

9 Section 2. This amendatory act shall not take effect unless
10 all of the following bills of the 84th Legislature are enacted
11 into law:

12 (a) Senate Bill No. 136.

13

14 (b) Senate Bill No. 137.

15