

HOUSE BILL No. 5803

May 22, 1990, Introduced by Rep. Jacobetti and referred to the Committee on Appropriations.

A bill to amend sections 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 prescribe the powers and duties of certain other state departments and agencies; 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,"

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 791.234 and 791.235 of the Michigan Compiled Laws; and to add section 34a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

14 (2) If a prisoner is sentenced for consecutive terms,
15 whether received at the same time or at any time during the life
16 of the original sentence, the parole board shall have jurisdic-
17 tion over the prisoner for purposes of parole when the prisoner
18 has served the total time of the added minimum terms, less the
19 good time credit allowed by statute. The maximum terms of the
20 sentences shall be added to compute the new maximum term under
21 this subsection, and discharge shall be issued only after the
22 total of the maximum sentences has been served less good time
23 allowances, unless the prisoner is paroled and discharged upon
24 satisfactory completion of the parole.

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

6 (4) A prisoner under sentence for life or for a term of
7 years, other than prisoners sentenced for life for murder in the
8 first degree and prisoners sentenced for life or for a minimum
9 term of imprisonment for a major controlled substance offense,
10 who has served 10 calendar years of the sentence is subject to
11 the jurisdiction of the parole board and may be released on
12 parole by the parole board, subject to the following conditions:

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

17 (b) A parole shall not be granted a prisoner so sentenced
18 until after a public hearing held in the manner prescribed for
19 pardons and commutations in sections 44(d) to 44(f) and 45.
20 Notice of the public hearing shall be given to the sentencing
21 judge, or the judge's successor in office, and parole shall not
22 be granted if the sentencing judge, or the judge's successor in
23 office, files written objections to the granting of the parole
24 within 30 days of receipt of the notice of hearing. The written
25 objections shall be made part of the prisoner's file.

26 (c) A parole granted under this subsection shall be for a
27 period of not less than 4 years and subject to the usual rules

1 pertaining to paroles granted by the parole board. A parole
2 ordered under this subsection shall not become valid until the
3 transcript of the record is filed with the attorney general whose
4 certification of receipt of the transcript shall be returnable to
5 the office of the parole board within 5 days. Except for medical
6 records protected by section 2157 of THE REVISED JUDICATURE ACT
7 OF 1961, Act No. 236 of the Public Acts of 1961, being section
8 600.2157 of the Michigan Compiled Laws, the file of a prisoner
9 granted a parole under this subsection shall be a public record.

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

14 (5) ~~The~~ EXCEPT AS PROVIDED IN SECTION 34A, THE time of a
15 prisoner's release on parole shall be discretionary with the
16 parole board. The action of the parole board in granting or
17 denying a parole shall be appealable to the circuit court by
18 leave of the court.

19 SEC. 34A. (1) A PRISONER SENTENCED TO A TERM OF IMPRISON-
20 MENT UNDER THE JURISDICTION OF THE DEPARTMENT AFTER THE EFFECTIVE
21 DATE OF THIS SECTION WHOSE CONTROLLING MINIMUM SENTENCE IS BASED
22 ON A SENTENCING GUIDELINES SCORE IN WHICH THE UPPER LIMIT IS 12
23 MONTHS OR LESS, AND WHO MEETS THE ELIGIBILITY REQUIREMENTS OF
24 SUBSECTION (2), SHALL BE CONSIDERED BY THE DEPARTMENT FOR PLACE-
25 MENT IN A SPECIAL ALTERNATIVE INCARCERATION UNIT ESTABLISHED
26 UNDER SECTION 3 OF THE SPECIAL ALTERNATIVE INCARCERATION ACT, ACT

1 NO. 287 OF THE PUBLIC ACTS OF 1988, BEING SECTION 798.13 OF THE
2 MICHIGAN COMPILED LAWS.

3 (2) TO BE ELIGIBLE FOR PLACEMENT IN A SPECIAL ALTERNATIVE
4 INCARCERATION UNIT, THE PRISONER SHALL MEET ALL OF THE FOLLOWING
5 REQUIREMENTS:

6 (A) THE PRISONER HAS NEVER PREVIOUSLY BEEN PLACED IN A SPE-
7 CIAL ALTERNATIVE INCARCERATION UNIT AS EITHER A PRISONER OR A
8 PROBATIONER, UNLESS HE OR SHE WAS REMOVED FROM A SPECIAL ALTERNA-
9 TIVE INCARCERATION UNIT FOR MEDICAL REASONS AS SPECIFIED IN
10 SUBSECTION (4).

11 (B) THE PRISONER IS PHYSICALLY ABLE TO PARTICIPATE IN THE
12 PROGRAM.

13 (C) THE PRISONER DOES NOT APPEAR TO HAVE ANY MENTAL HANDICAP
14 THAT WOULD PREVENT PARTICIPATION IN THE PROGRAM.

15 (D) THE PRISONER IS OTHERWISE SUITABLE FOR THE PROGRAM, AS
16 DETERMINED BY THE DEPARTMENT.

17 (E) THE PRISONER IS NOT SERVING A SENTENCE FOR ANY OF THE
18 FOLLOWING CRIMES:

19 (i) A VIOLATION OF SECTION 145C, 520B, 520C, 520D, OR 520G
20 OF THE MICHIGAN PENAL CODE, ACT NO. 328 OF THE PUBLIC ACTS OF
21 1931, BEING SECTIONS 750.145C, 750.520B, 750.520C, 750.520D, AND
22 750.520G OF THE MICHIGAN COMPILED LAWS.

23 (ii) A VIOLATION OF SECTION 72, 73, OR 75 OF THE MICHIGAN
24 PENAL CODE, ACT NO. 328 OF THE PUBLIC ACTS OF 1931, BEING
25 SECTIONS 750.72, 750.73, AND 750.75 OF THE MICHIGAN COMPILED
26 LAWS.

1 (iii) AN ATTEMPT TO COMMIT A CRIME DESCRIBED IN
2 SUBPARAGRAPH (i) OR (ii).

3 (3) THE DEPARTMENT MAY PLACE IN A SPECIAL ALTERNATIVE INCAR-
4 CERATION UNIT A PRISONER WHO MEETS THE ELIGIBILITY REQUIREMENTS
5 OF SUBSECTION (2). HOWEVER, A PRISONER SHALL NOT BE PLACED IN A
6 SPECIAL ALTERNATIVE INCARCERATION UNIT UNLESS THE PRISONER CON-
7 SENTS TO THAT PLACEMENT.

8 (4) A PRISONER MAY BE PLACED IN A SPECIAL ALTERNATIVE INCAR-
9 CERATION PROGRAM FOR A PERIOD OF NOT MORE THAN 120 DAYS. IF,
10 DURING THAT PERIOD, THE PRISONER MISSES MORE THAN 5 DAYS OF PRO-
11 GRAM PARTICIPATION DUE TO MEDICAL EXCUSE FOR ILLNESS OR INJURY
12 OCCURRING AFTER HE OR SHE WAS PLACED IN THE PROGRAM, THE PERIOD
13 OF PLACEMENT SHALL BE INCREASED BY THE NUMBER OF DAYS MISSED,
14 BEGINNING WITH THE SIXTH DAY OF MEDICAL EXCUSE, UP TO A MAXIMUM
15 OF 20 DAYS. A MEDICAL EXCUSE SHALL BE VERIFIED BY A PHYSICIAN'S
16 STATEMENT. A PRISONER WHO IS MEDICALLY UNABLE TO PARTICIPATE IN
17 THE PROGRAM FOR MORE THAN 25 DAYS SHALL BE RETURNED TO A STATE
18 CORRECTIONAL FACILITY BUT MAY BE REASSIGNED TO THE PROGRAM IF THE
19 THE PRISONER MEETS THE ELIGIBILITY REQUIREMENTS OF
20 SUBSECTION (2).

21 (5) UPON CERTIFICATION OF COMPLETION OF THE SPECIAL ALTERNA-
22 TIVE INCARCERATION PROGRAM, THE PRISONER SHALL BE PLACED ON
23 PAROLE. A PRISONER PAROLED UNDER THIS SECTION SHALL HAVE CONDI-
24 TIONS OF PAROLE AS DETERMINED APPROPRIATE BY THE PAROLE BOARD AND
25 SHALL BE PLACED ON PAROLE FOR NOT LESS THAN 18 MONTHS, OR THE
26 BALANCE OF THE PRISONER'S MAXIMUM SENTENCE, WHICHEVER IS LESS,
27 WITH AT LEAST THE FIRST 4 MONTHS UNDER INTENSIVE SUPERVISION.

1 (6) THE PAROLE BOARD MAY SUSPEND OR REVOKE PAROLE FOR ANY
2 PRISONER PAROLED UNDER THIS SECTION SUBJECT TO SECTIONS 39A AND
3 40A. IF PAROLE IS REVOKED BEFORE THE EXPIRATION OF THE
4 PRISONER'S MINIMUM SENTENCE, LESS DISCIPLINARY CREDITS, THE
5 PAROLE BOARD SHALL FORFEIT ALL ACCUMULATED DISCIPLINARY CREDITS
6 GRANTED PURSUANT TO SECTION 33(13) OF ACT NO. 118 OF THE PUBLIC
7 ACTS OF 1893, BEING SECTION 800.33 OF THE MICHIGAN COMPILED LAWS,
8 AND THE PRISONER SHALL BE CONSIDERED FOR PAROLE PURSUANT TO
9 SECTION 35.

10 Sec. 35. (1) The release of a prisoner on parole shall be
11 granted solely upon the initiative of the parole board. The
12 parole board may grant a parole without interviewing a prisoner.
13 A prisoner shall not be denied parole without an interview before
14 1 member of the parole board. The interview shall be conducted
15 at least 1 month before the expiration of the prisoner's minimum
16 sentence less good time allowances. The parole board shall not
17 consider any of the following factors in making a parole
18 determination:

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

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

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

3 (a) A prisoner's marital history.

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

6 (3) If an interview is to be conducted, the prisoner shall
7 be sent a notice of intent to conduct an interview at least 1
8 month before the date of the interview. The notice shall state
9 the specific issues and concerns which shall be discussed at the
10 interview and which may be a basis for a denial of parole. A
11 denial of parole shall not be based on reasons other than those
12 stated in the notice of intent to conduct an interview except for
13 good cause stated to the prisoner at or before the interview and
14 in the written explanation required by subsection (10). This
15 subsection shall not apply until April 1, 1983.

16 (4) Except for good cause, the parole board member conduct-
17 ing the interview shall not have cast a vote for or against the
18 prisoner's release prior to conducting the current interview.
19 The parole board member conducting the interview shall review
20 pertinent information relative to the notice of intent to conduct
21 an interview before the interview.

22 (5) A prisoner may waive the right to an interview by 1
23 member of the parole board. The waiver of the right to be inter-
24 viewed shall be given not more than 30 days after the notice of
25 intent to conduct an interview is issued and shall be made in
26 writing. During the interview held pursuant to a notice of
27 intent to conduct an interview, the prisoner may be represented

1 by an individual of his or her choice. The representative shall
2 not be another prisoner or an attorney. A prisoner is not enti-
3 tled to appointed counsel at public expense. The prisoner or
4 representative may present relevant evidence in support of
5 release. This subsection shall not apply until April 1, 1983.

6 (6) At least 90 days before the expiration of the prisoner's
7 minimum sentence, or the expiration of a 12-month continuance, a
8 parole eligibility report shall be prepared by appropriate insti-
9 tutional staff. The parole eligibility report shall be consid-
10 ered pertinent information for purposes of subsection (4). The
11 report shall include:

12 (a) A statement of all major misconduct charges of which the
13 prisoner was found guilty and the punishment served for the
14 misconduct.

15 (b) The prisoner's work and educational record while
16 confined.

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

19 (d) Whether the prisoner fully cooperated with the state by
20 providing complete financial information as required under sec-
21 tion 3a of THE STATE CORRECTIONAL FACILITY REIMBURSEMENT ACT, Act
22 No. 253 of the Public Acts of 1935, being section 800.403a of the
23 Michigan Compiled Laws.

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

26 (8) Psychological evaluations performed at the request of
27 the parole board to assist it in reaching a decision on the

1 release of a prisoner may be performed by the same person who
2 provided the prisoner with therapeutic treatment, unless a dif-
3 ferent person is requested by the prisoner or parole board.

4 (9) The parole board may grant a medical parole for a pris-
5 oner determined to be physically or mentally incapacitated. A
6 decision to grant a medical parole shall be initiated upon the
7 recommendation of the office of health care and shall be reached
8 only after a review of the medical, institutional, and criminal
9 records of the prisoner.

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

15 (11) THIS SECTION DOES NOT APPLY TO THE PLACEMENT ON PAROLE
16 OF A PERSON IN CONJUNCTION WITH SPECIAL ALTERNATIVE INCARCERATION
17 UNDER SECTION 34A(5).

18 Section 2. This amendatory act shall not take effect unless
19 Senate Bill No. _____ or House Bill No. 5802 (request
20 no. 05448'90) of the 85th Legislature is enacted into law.