

HOUSE BILL No. 4382

February 26, 1991, Introduced by Reps. Saunders, Leland, Harrison, Dresch, Stallworth, Perry Bullard, Dolan, Bankes, Gubow, Joe Young, Sr., Joe Young, Jr., Varga, Murphy, Clarke, Wallace, Yokich, Bennane, Jondahl, Law, Bouchard, Kilpatrick and Bryant and referred to the Committee on Judiciary.

A bill to amend sections 34 and 44 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,"

as amended by Act No. 314 of the Public Acts of 1982, being sections 791.234 and 791.244 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 34 and 44 of Act No. 232 of the Public
2 Acts of 1953, as amended by Act No. 314 of the Public Acts of
3 1982, being sections 791.234 and 791.244 of the Michigan Compiled
4 Laws, are amended to read as follows:

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

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

24 (3) If a prisoner has 1 or more consecutive terms remaining
25 to serve in addition to the term he or she is serving, the parole
26 board may terminate the sentence the prisoner is presently

1 serving at any time after the minimum term of the sentence has
2 been served.

3 (4) ~~-A-~~ EXCEPT AS PROVIDED IN SUBSECTION (5), A prisoner
4 under sentence for life or for a term of years, other than pris-
5 oners sentenced for life for murder in the first degree and pris-
6 oners sentenced for life or for a minimum term of imprisonment
7 for a major controlled substance offense, who has served 10 cal-
8 endar years of the sentence is subject to the jurisdiction of the
9 parole board and may be released on parole by the parole board,
10 subject to the following conditions:

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

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

24 (c) A parole granted under this subsection shall be for a
25 period of not less than 4 years and subject to the usual rules
26 pertaining to paroles granted by the parole board. A parole
27 ordered under this subsection shall not become valid until the

1 transcript of the record is filed with the attorney general whose
2 certification of receipt of the transcript shall be returnable to
3 the office of the parole board within 5 days. Except for medical
4 records protected by section 2157 of THE REVISED JUDICATURE ACT
5 OF 1961, Act No. 236 of the Public Acts of 1961, being section
6 600.2157 of the Michigan Compiled Laws, the file of a prisoner
7 granted a parole under this subsection ~~shall be~~ IS a public
8 record.

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

13 (5) A PRISONER SENTENCED FOR LIFE FOR MURDER IN THE FIRST
14 DEGREE IS SUBJECT TO THE PAROLE BOARD'S JURISDICTION UNDER
15 SUBSECTION (4) IF ALL OF THE FOLLOWING APPLY:

16 (A) THE PRISONER WAS CONVICTED OF FELONY MURDER BEFORE
17 NOVEMBER 25, 1980.

18 (B) THE PRISONER'S INTENTION TO KILL, INTENTION TO DO GREAT
19 BODILY HARM, OR WANTON AND WILLFUL DISREGARD OF THE LIKELIHOOD
20 THAT THE NATURAL TENDENCY OF THE PRISONER'S BEHAVIOR IS TO CAUSE
21 DEATH OR GREAT BODILY HARM WAS NOT PROVED IN THE TRIAL FOR FELONY
22 MURDER.

23 (6) ~~(5)~~ The time of a prisoner's release on parole ~~shall~~
24 ~~be~~ IS discretionary with the parole board. The action of the
25 parole board in granting or denying a parole ~~shall be~~ IS
26 appealable to the circuit court by leave of the court.

1 Sec. 44. Subject to the constitutional authority of the
2 governor to grant reprieves, commutations, and pardons, 1 member
3 of the parole board shall interview a prisoner serving a sentence
4 for murder in the first degree, EXCEPT FOR SUCH PRISONERS SUBJECT
5 TO THE PAROLE BOARD'S JURISDICTION UNDER SECTION 34(5), at the
6 conclusion of 4 calendar years and biennially thereafter until
7 ~~such time as~~ the prisoner is granted a reprieve, commutation,
8 or pardon by the governor, or is deceased. Upon receipt of ~~any~~
9 AN application for reprieve, commutation, or pardon, the parole
10 board shall:

11 (a) Deliver the original application to the governor and
12 retain a copy in its file, pending investigation and hearing.

13 (b) Within 10 days after receipt of any application, forward
14 to the sentencing judge and to the prosecuting attorney of the
15 county having original jurisdiction of the case, or their succes-
16 sors in office, a written notice of the filing of the applica-
17 tion, together with copies of the application, the supporting
18 affidavits, and a brief summary of the case. Within 30 days
19 after receipt of notice of the filing of any application, the
20 sentencing judge and the prosecuting attorney, or their succes-
21 sors in office, may file information at their disposal, together
22 with any objections, in writing, ~~which~~ THAT they may desire to
23 interpose. If the sentencing judge and the prosecuting attorney,
24 or their successors in office, do not respond within 30 days, the
25 parole board shall proceed on the application.

26 (c) ~~In all cases where~~ IF a commutation application is
27 based on physical or mental incapacity, direct the office of

1 health care to evaluate the condition of the prisoner and report
2 on that condition. If the office of health care determines that
3 the applicant is physically or mentally incapacitated, the office
4 shall appoint a specialist in the appropriate field of medicine,
5 who is not employed by the department, to evaluate the condition
6 of the prisoner and to report on that condition. These reports
7 are protected by the doctor-patient privilege of confidentiality,
8 except that the reports shall be provided to the governor for
9 review.

10 (d) ~~In all cases where~~ IF the parole board initiates or
11 the applicant applies for a reprieve, commutation, or pardon, the
12 parole board shall conduct a public hearing not later than 90
13 days after making a decision to proceed with consideration of a
14 recommendation for executive clemency. The public hearing must
15 be held before a formal recommendation of executive clemency is
16 made. One member of the parole board may conduct the hearing,
17 and the public shall be represented by the attorney general or a
18 member of the attorney general's staff.

19 (e) At least 5 days before a public hearing, written notice
20 of the public hearing shall be transmitted by mail to the attor-
21 ney general, the sentencing trial judge, and the prosecuting
22 attorney, or their successors in office.

23 (f) A public hearing shall be conducted pursuant to the
24 rules promulgated by the department. Any person having informa-
25 tion in connection with any application for pardon, commutation,
26 or reprieve, shall be sworn as a witness. In hearing testimony,

1 the parole board shall give liberal construction to any technical
2 rules of evidence.

3 (g) If an application has been made for executive clemency,
4 the parole board shall make a full investigation and determina-
5 tion on whether or not to proceed to a public hearing within 270
6 days of receipt of the application. If the parole board recom-
7 mends executive clemency, it shall make all data in its files
8 available to the governor. Except for medical records protected
9 by the doctor-patient privilege of confidentiality, the files of
10 the parole board in these cases shall be matters of public
11 record.