

# SENATE BILL No. 29

February 5, 1991, Introduced by Senators BARCIA and  
DI NELLO and referred to the Committee on Judiciary.

A bill to amend sections 34, 44, and 65a 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,"

sections 34 and 44 as amended by Act No. 314 of the Public Acts  
of 1982 and section 65a as amended by Act No. 272 of the Public

Acts of 1988, being sections 791.234, 791.244, and 791.265a of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Section 1. Sections 34, 44, and 65a of Act No. 232 of the  
2 Public Acts of 1953, sections 34 and 44 as amended by Act No. 314  
3 of the Public Acts of 1982 and section 65a as amended by Act  
4 No. 272 of the Public Acts of 1988, being sections 791.234,  
5 791.244, and 791.265a of the Michigan Compiled Laws, are amended  
6 to read as follows:

7       Sec. 34. (1) A prisoner sentenced to an indeterminate sen-  
8 tence and confined in a state prison or reformatory with a mini-  
9 mum in terms of years shall be subject to the jurisdiction of the  
10 parole board when the prisoner has served a period of time equal  
11 to the minimum sentence imposed by the court for the crime of  
12 which he or she was convicted, less good time allowances, if  
13 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~~ A PRISONER sentenced for life for  
8 murder in the first degree OR MURDER IN THE SECOND DEGREE and  
9 ~~prisoners~~ A PRISONER sentenced for life or for a minimum term  
10 of imprisonment for a major controlled substance offense, who has  
11 served 10 calendar years of the sentence is subject to the juris-  
12 diction of the parole board and may be released on parole by the  
13 parole board, subject to the following conditions:

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

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

1 (c) A parole granted under this subsection shall be for a  
2 period of not less than 4 years and subject to the usual rules  
3 pertaining to paroles granted by the parole board. A parole  
4 ordered under this subsection shall not become valid until the  
5 transcript of the record is filed with the attorney general whose  
6 certification of receipt of the transcript shall be returnable to  
7 the office of the parole board within 5 days. Except for medical  
8 records protected ~~by~~ UNDER section 2157 of THE REVISED JUDICA-  
9 TURE ACT OF 1961, Act No. 236 of the Public Acts of 1961, being  
10 section 600.2157 of the Michigan Compiled Laws, the file of a  
11 prisoner granted a parole under this subsection shall be a public  
12 record.

13 (d) A parole shall not be granted under this subsection in  
14 the case of a prisoner who is otherwise prohibited by law from  
15 parole consideration. In such ~~cases~~ A CASE the interview pro-  
16 cedures in section 44 shall be followed.

17 (5) The time of a prisoner's release on parole shall be dis-  
18 cretionary with the parole board. The action of the parole board  
19 in granting or denying a parole shall be appealable to the cir-  
20 cuit court by leave of the court.

21 Sec. 44. Subject to the constitutional authority of the  
22 governor to grant reprieves, commutations, and pardons, 1 member  
23 of the parole board shall interview a prisoner serving a sentence  
24 for murder in the first degree OR MURDER IN THE SECOND DEGREE at  
25 the conclusion of 4 calendar years and biennially thereafter  
26 until such time as the prisoner is granted a reprieve,  
27 commutation, or pardon by the governor, or is deceased. Upon

1 receipt of any application for reprieve, commutation, or pardon,  
2 the parole board shall DO ALL OF THE FOLLOWING:

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

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

18 (c) In all cases where a commutation application is based on  
19 physical or mental incapacity, direct the office of health care  
20 to evaluate the condition of the prisoner and report on that  
21 condition. If the office of health care determines that the  
22 applicant is physically or mentally incapacitated, the office  
23 shall appoint a specialist in the appropriate field of medicine,  
24 who is not employed by the department, to evaluate the condition  
25 of the prisoner and to report on that condition. These reports  
26 are protected by the doctor-patient privilege of confidentiality,

1 except that the reports shall be provided to the governor for  
2 review.

3 (d) In all cases where the parole board initiates or the  
4 applicant applies for a reprieve, commutation, or pardon, the  
5 parole board shall conduct a public hearing not later than 90  
6 days after making a decision to proceed with consideration of a  
7 recommendation for executive clemency. The public hearing must  
8 be held before a formal recommendation of executive clemency is  
9 made. One member of the parole board may conduct the hearing,  
10 and the public shall be represented by the attorney general or a  
11 member of the attorney general's staff.

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

16 (f) A public hearing shall be conducted pursuant to the  
17 rules promulgated by the department. ~~Any~~ A person ~~having~~  
18 PRESENTING information in connection with any application for  
19 pardon, commutation, or reprieve, shall be sworn as a witness.  
20 In hearing testimony, the parole board shall give liberal con-  
21 struction to ~~any technical~~ THE rules of evidence.

22 (g) If an application has been made for executive clemency,  
23 the parole board shall make a full investigation and determina-  
24 tion on whether or not to proceed to a public hearing within 270  
25 days of receipt of the application. If the parole board recom-  
26 mends executive clemency, it shall make all data in its files  
27 available to the governor. Except for medical records protected

1 by the doctor-patient privilege of confidentiality, the files of  
2 the parole board in these cases shall be matters of public  
3 record.

4       Sec. 65a. (1) Under prescribed conditions, the director may  
5 extend the limits of confinement of a prisoner ~~—~~ when there is  
6 reasonable assurance, after consideration of all facts and cir-  
7 cumstances ~~—~~ that the prisoner will not become a menace to  
8 society or to the public safety, by authorizing the prisoner to  
9 do any of the following:

10       (a) Visit a specifically designated place or SPECIFICALLY  
11 DESIGNATED places. An extension of limits may be granted only to  
12 a prisoner housed in a state correctional facility to permit a  
13 visit to a critically ill relative, attendance at the funeral of  
14 a relative, or ~~the contacting of~~ TO CONTACT prospective  
15 employers. The maximum amount of time a prisoner is eligible for  
16 an extension of the limits of confinement under this subdivision  
17 shall not exceed a cumulative total period of 30 days. On or  
18 before December 31, 1989, the department shall report to the  
19 standing committee of the senate and house of representatives  
20 having jurisdiction over corrections the number of prisoners who  
21 are under this subdivision, the amount of time each prisoner is  
22 released, and any major misconducts or crimes committed by a  
23 prisoner released under this subparagraph between December 1,  
24 1988 and December 1, 1989.

25       (b) Obtain medical services not otherwise available to a  
26 prisoner housed in a state correctional facility.

1 (c) Work at paid employment, participate in a training or  
2 educational program, or participate in a community residential  
3 drug treatment program while continuing as a prisoner housed on a  
4 voluntary basis at a community corrections center or in a commu-  
5 nity residential home.

6 (2) The director shall promulgate rules to implement this  
7 section.

8 (3) The willful failure of a prisoner to remain within the  
9 extended limits of his or her confinement or to return within the  
10 time prescribed to an institution or facility designated by the  
11 director shall be ~~deemed~~ CONSIDERED an escape from custody as  
12 provided in section 193 of the Michigan penal code, Act No. 328  
13 of the Public Acts of 1931, as amended, being section 750.193 of  
14 the Michigan Compiled Laws.

15 (4) ~~Prisoners~~ A PRISONER convicted of a crime of violence  
16 or any assaultive crime shall not be eligible for the extensions  
17 of the limits of confinement provided in subsection (1) until  
18 such time as the minimum sentence imposed for the crime has less  
19 than 180 days remaining, except that if the reason for the exten-  
20 sion is to visit a critically ill relative, attend the funeral of  
21 a relative, or obtain medical services not otherwise available,  
22 the director may allow the extension under escort as provided in  
23 subsection (1).

24 (5) ~~Prisoners~~ A PRISONER serving a sentence for murder in  
25 the first degree OR SERVING A SENTENCE OF IMPRISONMENT FOR LIFE  
26 FOR MURDER IN THE SECOND DEGREE shall not be eligible for the  
27 extensions of confinement under this section until a parole



1 release date is established by the parole board and in no case  
2 prior to service of 15 calendar years with a good institutional  
3 adjustment.

4 (6) As used in this section:

5 (a) "Community corrections center" means a facility either  
6 contracted for or operated by the department in which a security  
7 staff is on duty 7 days per week, 24 hours per day except that  
8 the department may waive the requirement that electronic monitor-  
9 ing be provided as to any prisoner who is within 3 months of his  
10 or her parole date.

11 (b) "Community residential home" means a facility where  
12 electronic monitoring of prisoner presence is provided by the  
13 department 7 days per week, 24 hours per day.

14 (c) "State correctional facility" means a facility owned or  
15 leased by the department. State correctional facility does not  
16 include a community corrections center or community residential  
17 home.