

# SENATE BILL No. 204

March 20, 1991, Introduced by Senators DI NELLO, HART, KELLY, CRUCE, KOIVISTO and CARL and referred to the Committee on Family Law, Criminal Law, and Corrections.

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 with a mini-  
7 mum in terms of years shall be subject to the jurisdiction of the  
8 parole board when the prisoner has served a period of time equal  
9 to the minimum sentence imposed by the court for the crime of  
10 which he or she was convicted, less good time allowances, if  
11 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 allowed by statute. The maximum terms of the  
18 sentences shall be added to compute the new maximum term under  
19 this subsection, and discharge shall be issued only after the  
20 total of the maximum sentences has been served less good time  
21 allowances, unless the prisoner is paroled and discharged upon  
22 satisfactory completion of the parole.

23       (3) If a prisoner has 1 or more consecutive terms remaining  
24 to serve in addition to the term he or she is serving, the parole  
25 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 prisoner ~~under sentence~~ SENTENCED TO IMPRISONMENT  
4 for life ~~or~~ SHALL NOT BE RELEASED ON PAROLE. A PRISONER SEN-  
5 TENCED TO IMPRISONMENT for a term of years, other than  
6 ~~prisoners~~ A PRISONER sentenced ~~for life for murder in the~~  
7 ~~first degree and prisoners sentenced for life or for~~ TO a mini-  
8 mum term of imprisonment for a major controlled substance  
9 offense, who has served 10 calendar years of the sentence is  
10 subject to the jurisdiction of the parole board and may be  
11 released on parole by the parole board, subject to the following  
12 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~~ SECTION 44(d) to ~~44(f)~~  
20 (F) and SECTION 45. Notice of the public hearing shall be given  
21 to the sentencing judge, or the judge's successor in office, and  
22 parole shall not be granted if the sentencing judge, or the  
23 judge's successor in office, files written objections to the  
24 granting of the parole within 30 days of receipt of the notice of  
25 hearing. The written objections shall be made part of the  
26 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 the interview procedures in  
16 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~~ OF IMPRISONMENT FOR LIFE OR  
25 SERVING A SENTENCE OF A MINIMUM TERM OF IMPRISONMENT FOR A MAJOR  
26 CONTROLLED SUBSTANCE OFFENSE at the conclusion of 4 calendar  
27 years and biennially thereafter until ~~such time as~~ the prisoner

1 is granted a reprieve, commutation, or pardon by the governor, or  
2 is deceased. Upon receipt of any application for reprieve, com-  
3 mutation, or pardon, the parole board shall DO ALL OF THE  
4 FOLLOWING:

5 (a) Deliver the original application to the governor and  
6 retain a copy OF THIS APPLICATION in its file, pending AN inves-  
7 tigation and A hearing.

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

22 (c) In all cases ~~where~~ IN WHICH a commutation application  
23 is based on physical or mental incapacity, direct the office of  
24 health care to evaluate the condition of the prisoner and report  
25 on that condition. If the office of health care determines that  
26 the applicant is physically or mentally incapacitated, the office  
27 shall appoint a specialist in the appropriate field of medicine,

1 who is not employed by the department, to evaluate the condition  
2 of the prisoner and to report on that condition. These reports  
3 are protected by the doctor-patient privilege of confidentiality,  
4 except that the reports shall be provided to the governor for  
5 review.

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

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

19 (f) A public hearing shall be conducted pursuant to the  
20 rules promulgated by the department. Any person ~~having~~  
21 ~~information~~ PRESENTING TESTIMONY in connection with any applica-  
22 tion for pardon, commutation, or reprieve, shall be sworn as a  
23 witness. In hearing testimony, the parole board shall give  
24 liberal construction to any technical rules of evidence.

25 (g) If an application has been made for executive clemency,  
26 the parole board, WITHIN 270 DAYS AFTER RECEIVING THE  
27 APPLICATION, shall make a full investigation and determination on

1 whether or not to proceed to a public hearing. ~~within 270 days~~  
2 ~~of receipt of the application.~~ If the parole board recommends  
3 executive clemency, it shall make all data in its files available  
4 to the governor. Except for medical records protected by the  
5 doctor-patient privilege of confidentiality, the files of the  
6 parole board in these cases shall be matters of public record.