



SENATE BILL No. 1282

September 21, 1994, Introduced by Senators BERRYMAN, HART, KOIVISTO and MILLER and referred to the Committee on Judiciary

A bill to amend sections 33, 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, to pardons, reprieves, commutations, and paroles, to the administration of correctional institutions, correctional farms, and probation recovery camps, to prisoner labor and correctional industries, and to 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 transferred by this act 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 to make certain appropriations to repeal certain parts of this act on specific dates and to repeal all acts and parts of acts inconsistent with the provisions of this act,"

as amended by Act No 217 of the Public Acts of 1994, being sections 791 233, 791 234, and 791 235 of the Michigan Compiled Laws

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 33, 34, and 35 of Act No 232 of the
2 Public Acts of 1953, as amended by Act No 217 of the Public Acts
3 of 1994, being sections 791 233, 791 234, and 791 235 of the
4 Michigan Compiled Laws, are amended to read as follows

5 Sec 33 (1) The grant of a parole is subject to all of the
6 following

7 (a) A prisoner shall not be given liberty on parole until
8 the board has reasonable assurance, after consideration of all of
9 the facts and circumstances, including the prisoner's mental and
10 social attitude, that the prisoner will not become a menace to
11 society or to the public safety

12 (b) Except as provided in section 34a, a parole shall not be
13 granted to a prisoner other than a prisoner subject to disci-
14 plinary time until the prisoner has served the minimum term
15 imposed by the court less allowances for good time or special
16 good time to which the prisoner may be entitled by statute,
17 except that a prisoner other than a prisoner subject to disci-
18 plinary time is eligible for parole before the expiration of his
19 or her minimum term of imprisonment whenever the sentencing
20 judge, or the judge's successor in office, gives written approval
21 of the parole of the prisoner before the expiration of the mini-
22 mum term of imprisonment

23 (c) Except as provided in section 34a, and notwithstanding
24 the provisions of subdivision (b), a parole shall not be granted
25 to a prisoner other than a prisoner subject to disciplinary time
26 sentenced for the commission of a crime described in

1 section 33b(a) to (cc) until the prisoner has served the minimum
2 term imposed by the court less an allowance for disciplinary
3 credits as provided in section 33(5) of Act No 118 of the Public
4 Acts of 1893, being section 800 33 of the Michigan Compiled
5 Laws A prisoner described in this subdivision is not eligible
6 for special parole

7 (d) Except as provided in section 34a, a parole shall not be
8 granted to a prisoner subject to disciplinary time until the
9 prisoner has served the minimum term imposed by the court, plus
10 any disciplinary time accumulated pursuant to section 34 of Act
11 No 118 of the Public Acts of 1893, being section 800 34 of the
12 Michigan Compiled Laws

13 (E) NOTWITHSTANDING SUBDIVISIONS (B) TO (D), A PAROLE SHALL
14 NOT BE GRANTED TO A PRISONER WHO COMMITTED A SPECIFIED FELONY AS
15 DEFINED IN SECTION 10A OF CHAPTER IX OF THE CODE OF CRIMINAL PRO-
16 CEDURE, ACT NO 175 OF THE PUBLIC ACTS OF 1927, BEING
17 SECTION 769 10A OF THE MICHIGAN COMPILED LAWS, UNTIL THE PRISONER
18 HAS SERVED 85% OF THE MAXIMUM TERM IMPOSED BY THE COURT, PLUS ANY
19 APPLICABLE DISCIPLINARY TIME

20 (F) ~~-(e)-~~ A prisoner shall not be released on parole until
21 the parole board has satisfactory evidence that arrangements have
22 been made for such honorable and useful employment as the pris-
23 oner is capable of performing, for the prisoner's education, or
24 for the prisoner's care if the prisoner is mentally or physically
25 ill or incapacitated

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

1 if an accredited agent of the agency filing the warrant calls for
2 the prisoner to be 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 24 328 of the Michigan Compiled Laws, the parole
6 board may promulgate rules not inconsistent with this act with
7 respect to conditions to be imposed upon prisoners paroled under
8 this act

9 (4) THE PROVISIONS OF THIS SECTION REGARDING PRISONERS
10 SUBJECT TO DISCIPLINARY TIME TAKE EFFECT BEGINNING ON THE EFFEC-
11 TIVE DATE OF ACT NO 217 OF THE PUBLIC ACTS OF 1994, AS PRE-
12 SCRIBED IN ENACTING SECTION 2 OF THAT AMENDATORY ACT

13 Sec 34 (1) Except as provided in section 34a, a prisoner
14 sentenced to an indeterminate sentence and confined in a state
15 correctional facility with a minimum in terms of years other than
16 a prisoner subject to disciplinary time is subject to the juris-
17 diction of the parole board when the prisoner has served a period
18 of time equal to the minimum sentence imposed by the court for
19 the crime of which he or she was convicted, less good time and
20 disciplinary credits, if applicable

21 (2) Except as provided in section 34a, a prisoner subject to
22 disciplinary time sentenced to an indeterminate sentence and con-
23 fined in a state correctional facility with a minimum in terms of
24 years is subject to the jurisdiction of the parole board when the
25 prisoner has served a period of time equal to the minimum sen-
26 tence imposed by the court for the crime of which he or she was
27 convicted, plus any disciplinary time accumulated pursuant to

1 section 34 of Act No 118 of the Public Acts of 1893, being
2 section 800 34 of the Michigan Compiled Laws

3 (3) NOTWITHSTANDING SUBSECTION (1) OR (2), A PRISONER WHO
4 COMMITTED A SPECIFIED FELONY AS DEFINED IN SECTION 10A OF CHAPTER
5 IX OF THE CODE OF CRIMINAL PROCEDURE, ACT NO 175 OF THE PUBLIC
6 ACTS OF 1927, BEING SECTION 769 10A OF THE MICHIGAN COMPILED
7 LAWS, IS SUBJECT TO THE JURISDICTION OF THE PAROLE BOARD WHEN THE
8 PRISONER HAS SERVED A PERIOD OF TIME EQUAL TO 85% OF THE MAXIMUM
9 TERM IMPOSED BY THE COURT, PLUS ANY APPLICABLE DISCIPLINARY TIME

10 (4) ~~-(3)-~~ If a prisoner other than a prisoner subject to
11 disciplinary time is sentenced for consecutive terms, whether
12 received at the same time or at any time during the life of the
13 original sentence, the parole board has jurisdiction over the
14 prisoner for purposes of parole when the prisoner has served the
15 total time of the added minimum terms, less the good time and
16 disciplinary credits allowed by statute The maximum terms of
17 the sentences shall be added to compute the new maximum term
18 under this subsection, and discharge shall be issued only after
19 the total of the maximum sentences has been served less good time
20 and disciplinary credits, unless the prisoner is paroled and dis-
21 charged upon satisfactory completion of the parole

22 (5) ~~-(4)-~~ If a prisoner subject to disciplinary time is sen-
23 tenced for consecutive terms, whether received at the same time
24 or at any time during the life of the original sentence, the
25 parole board has jurisdiction over the prisoner for purposes of
26 parole when the prisoner has served the total time of the added
27 minimum terms, plus any disciplinary time The maximum terms of

1 the sentences shall be added to compute the new maximum term
2 under this subsection, and discharge shall be issued only after
3 the total of the maximum sentences has been served, unless the
4 prisoner is paroled and discharged upon satisfactory completion
5 of the parole

6 (6) ~~—(5)—~~ If a prisoner other than a prisoner subject to
7 disciplinary time has 1 or more consecutive terms remaining to
8 serve in addition to the term he or she is serving, the parole
9 board may terminate the sentence the prisoner is presently serv-
10 ing at any time after the minimum term of the sentence has been
11 served

12 (7) ~~—(6)—~~ A prisoner under sentence for life or for a term
13 of years, other than a prisoner ~~—sentenced for life for murder in~~
14 ~~the first degree or sentenced for life or for a minimum term of~~
15 ~~imprisonment for a major controlled substance offense~~ DESCRIBED
16 IN SUBSECTION (8), who has served 10 calendar years of the sen-
17 tence in the case of a prisoner sentenced for a crime committed
18 before October 1, 1992, or who has served 15 calendar years of
19 the sentence in the case of a prisoner sentenced for a crime com-
20 mitted on or after October 1, 1992, is subject to the jurisdic-
21 tion of the parole board and may be released on parole by the
22 parole board, subject to the following conditions

23 (a) One member of the parole board shall interview the pris-
24 oner at the conclusion of 10 calendar years of the sentence and
25 every 5 years thereafter until such time as the prisoner is
26 paroled, discharged, or deceased The interview schedule
27 prescribed in this subdivision applies to all prisoners to whom

1 this subsection is applicable, whether sentenced before, on, or
2 after the effective date of the 1992 amendatory act that amended
3 this subdivision

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

13 (c) A parole granted under this subsection shall be for a
14 period of not less than 4 years and subject to the usual rules
15 pertaining to paroles granted by the parole board A parole
16 ordered under this subsection is not valid until the transcript
17 of the record is filed with the attorney general whose certifica-
18 tion of receipt of the transcript shall be returnable to the
19 office of the parole board within 5 days Except for medical
20 records protected under section 2157 of the revised judicature
21 act of 1961, Act No 236 of the Public Acts of 1961, being sec-
22 tion 600 2157 of the Michigan Compiled Laws, the file of a pris-
23 oner granted a parole under this subsection is a public record

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

1 (8) SUBSECTION (7) DOES NOT APPLY TO THE FOLLOWING
2 PRISONERS

3 (A) A PRISONER SENTENCED FOR LIFE FOR MURDER IN THE FIRST
4 DEGREE

5 (B) A PRISONER SENTENCED FOR LIFE OR FOR A MINIMUM TERM OF
6 IMPRISONMENT FOR A MAJOR CONTROLLED SUBSTANCE OFFENSE

7 (C) A PRISONER SENTENCED TO IMPRISONMENT FOR LIFE UNDER SEC-
8 TION 10A OF CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE, ACT
9 NO 175 OF THE PUBLIC ACTS OF 1927, BEING SECTION 769 10A OF THE
10 MICHIGAN COMPILED LAWS

11 (9) ~~-(7)-~~ Except as provided in section 34a, a prisoner's
12 release on parole is discretionary with the parole board The
13 action of the parole board in granting or denying a parole is
14 appealable by the prisoner, the prosecutor of the county from
15 which the prisoner was committed, or the victim of the crime for
16 which the prisoner was convicted The appeal shall be to the
17 circuit court by leave of the court

18 (10) THE PROVISIONS OF THIS SECTION REGARDING PRISONERS
19 SUBJECT TO DISCIPLINARY TIME TAKE EFFECT BEGINNING ON THE EFFEC-
20 TIVE DATE OF ACT NO 217 OF THE PUBLIC ACTS OF 1994, AS PRE-
21 SCRIBED IN ENACTING SECTION 2 OF THAT AMENDATORY ACT

22 Sec 35 (1) The release of a prisoner on parole shall be
23 granted solely upon the initiative of the parole board The
24 parole board may grant a parole without interviewing the
25 prisoner However, beginning on the date on which the adminis-
26 trative rules prescribing parole guidelines pursuant to
27 section 33e(5) take effect, the parole board may grant a parole

1 without interviewing the prisoner only if, after evaluating the
2 prisoner according to the parole guidelines, the parole board
3 determines that the prisoner has a high probability of being
4 paroled and the parole board therefore intends to parole the
5 prisoner Except as provided in subsection (2), a prisoner shall
6 not be denied parole without an interview before 1 member of the
7 parole board The interview shall be conducted at least 1 month
8 before the expiration of the prisoner's minimum sentence less
9 applicable good time and disciplinary credits for a prisoner eli-
10 gible for good time and disciplinary credits ~~—~~ or at least 1
11 month before the expiration of the prisoner's minimum sentence
12 plus disciplinary time for a prisoner subject to disciplinary
13 time OR AT LEAST 1 MONTH BEFORE THE EXPIRATION OF 85% OF THE
14 PRISONER'S MAXIMUM SENTENCE PLUS ANY APPLICABLE DISCIPLINARY TIME
15 FOR A PRISONER WHO COMMITTED A SPECIFIED FELONY AS DEFINED IN
16 SECTION 10A OF CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE, ACT
17 NO 175 OF THE PUBLIC ACTS OF 1927, BEING SECTION 769 10A OF THE
18 MICHIGAN COMPILED LAWS The parole board shall consider any
19 statement made to the parole board by a crime victim under the
20 crime victim's rights act, Act No 87 of the Public Acts of 1985,
21 being sections 780 751 to 780 834 of the Michigan Compiled Laws,
22 or under any other provision of law The parole board shall not
23 consider any of the following factors in making a parole
24 determination

25 (a) A juvenile record that a court has ordered the depart-
26 ment to expunge

1 (b) Information that is determined by the parole board to be
2 inaccurate or irrelevant after a challenge and presentation of
3 relevant evidence by a prisoner who has received a notice of
4 intent to conduct an interview as provided in subsection (4)
5 This subdivision applies only to presentence investigation
6 reports prepared before April 1, 1983

7 (2) Beginning on the date on which the administrative rules
8 prescribing the parole guidelines take effect pursuant to
9 section 33e(5), if, after evaluating a prisoner according to the
10 parole guidelines, the parole board determines that the prisoner
11 has a low probability of being paroled and the parole board
12 therefore does not intend to parole the prisoner, the parole
13 board shall not be required to interview the prisoner before
14 denying parole to the prisoner

15 (3) The parole board may consider but shall not base a
16 determination to deny parole solely on either of the following

17 (a) A prisoner's marital history

18 (b) Prior arrests not resulting in conviction or adjudica-
19 tion of delinquency

20 (4) If an interview is to be conducted, the prisoner shall
21 be sent a notice of intent to conduct an interview at least 1
22 month before the date of the interview The notice shall state
23 the specific issues and concerns that shall be discussed at the
24 interview and that may be a basis for a denial of parole A
25 denial of parole shall not be based on reasons other than those
26 stated in the notice of intent to conduct an interview except for
27 good cause stated to the prisoner at or before the interview and

1 in the written explanation required by subsection (12) This
2 subsection does not apply until April 1, 1983

3 (5) Except for good cause, the parole board member conduct-
4 ing the interview shall not have cast a vote for or against the
5 prisoner's release before conducting the current interview
6 Before the interview, the parole board member who is to conduct
7 the interview shall review pertinent information relative to the
8 notice of intent to conduct an interview

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

20 (7) At least 90 days before the expiration of the prisoner's
21 minimum sentence less applicable good time and disciplinary cred-
22 its for a prisoner eligible for good time or disciplinary
23 credits — or at least 90 days before the expiration of the
24 prisoner's minimum sentence plus disciplinary time for a prisoner
25 subject to disciplinary time — OR AT LEAST 90 DAYS BEFORE THE
26 EXPIRATION OF 85% OF THE PRISONER'S MAXIMUM SENTENCE PLUS ANY
27 APPLICABLE DISCIPLINARY TIME FOR A PRISONER WHO COMMITTED A

1 SPECIFIED FELONY AS DEFINED IN SECTION 10A OF CHAPTER IX OF THE
2 CODE OF CRIMINAL PROCEDURE, ACT NO 175 OF THE PUBLIC ACTS OF
3 1927, BEING SECTION 769 10A OF THE MICHIGAN COMPILED LAWS or the
4 expiration of a 12-month continuance for any prisoner, a parole
5 eligibility report shall be prepared by appropriate institutional
6 staff The parole eligibility report shall be considered pertinent
7 information for purposes of subsection (5) The report
8 shall include all of the following

9 (a) A statement of all major misconduct charges of which the
10 prisoner was found guilty and the punishment served for the
11 misconduct

12 (b) The prisoner's work and educational record while
13 confined

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

16 (d) Whether the prisoner fully cooperated with the state by
17 providing complete financial information as required under section
18 3a of the state correctional facility reimbursement act, Act
19 No 253 of the Public Acts of 1935, being section 800 403a of the
20 Michigan Compiled Laws

21 (8) The preparer of the report shall not include a recommendation
22 as to release on parole

23 (9) Psychological evaluations performed at the request of
24 the parole board to assist it in reaching a decision on the
25 release of a prisoner may be performed by the same person who
26 provided the prisoner with therapeutic treatment, unless a
27 different person is requested by the prisoner or parole board

1 (10) The parole board may grant a medical parole for a
2 prisoner determined to be physically or mentally incapacitated
3 A decision to grant a medical parole shall be initiated upon the
4 recommendation of the bureau of health care services and shall be
5 reached only after a review of the medical, institutional, and
6 criminal records of the prisoner

7 (11) The department shall submit a petition to the probate
8 court under section 434 of the mental health code, Act No 258 of
9 the Public Acts of 1974, being section 330 1434 of the Michigan
10 Compiled Laws, for any prisoner being paroled or being released
11 after serving his or her maximum sentence whom the department
12 considers to be a person requiring treatment The parole board
13 shall require mental health treatment as a special condition of
14 parole for any parolee whom the department has determined to be a
15 person requiring treatment whether or not the petition filed for
16 that prisoner is granted by the probate court As used in this
17 subsection, "person requiring treatment" means that term as
18 defined in section 401 of Act No 258 of the Public Acts of 1974,
19 being section 330 1401 of the Michigan Compiled Laws

20 (12) When the parole board makes a final determination not
21 to release a prisoner, the prisoner shall be provided with a
22 written explanation of the reason for denial and, if appropriate,
23 specific recommendations for corrective action the prisoner may
24 take to facilitate release

25 (13) This section does not apply to the placement on parole
26 of a person in conjunction with special alternative incarceration
27 under section 34a(7)

1 (14) THE PROVISIONS OF THIS SECTION REGARDING PRISONERS
2 SUBJECT TO DISCIPLINARY TIME TAKE EFFECT BEGINNING ON THE EFFEC-
3 TIVE DATE OF ACT NO 217 OF THE PUBLIC ACTS OF 1994, AS PRE-
4 SCRIBED IN ENACTING SECTION 2 OF THAT AMENDATORY ACT

5 Section 2 This amendatory act shall not take effect unless
6 Senate Bill No 1283

7 of the 87th Legislature is enacted into law