

REPRINT

SUBSTITUTE FOR

HOUSE BILL NO. 4624

(As passed the House, October 7, 1999)

A bill to amend 1953 PA 232, entitled

"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 allow for the operation of certain facilities by private entities; 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,"

by amending sections 34 and 44 (MCL 791.234 and 791.244), section 34 as amended by 1998 PA 512 and section 44 as amended by 1992 PA 181.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 34. (1) Except as provided in section 34a, a prisoner
2 sentenced to an indeterminate sentence and confined in a state
3 correctional facility with a minimum in terms of years other than
4 a prisoner subject to disciplinary time is subject to the juris-
5 diction of the parole board when the prisoner has served a period
6 of time equal to the minimum sentence imposed by the court for
7 the crime of which he or she was convicted, less good time and
8 disciplinary credits, if applicable.

9 (2) Except as provided in section 34a, a prisoner subject to
10 disciplinary time sentenced to an indeterminate sentence and con-
11 fined in a state correctional facility with a minimum in terms of
12 years is subject to the jurisdiction of the parole board when the
13 prisoner has served a period of time equal to the minimum sen-
14 tence imposed by the court for the crime of which he or she was
15 convicted.

16 (3) If a prisoner other than a prisoner subject to disci-
17 plinary time is sentenced for consecutive terms, whether received
18 at the same time or at any time during the life of the original
19 sentence, the parole board has jurisdiction over the prisoner for
20 purposes of parole when the prisoner has served the total time of
21 the added minimum terms, less the good time and disciplinary
22 credits allowed by statute. The maximum terms of the sentences
23 shall be added to compute the new maximum term under this subsec-
24 tion, and discharge shall be issued only after the total of the
25 maximum sentences has been served less good time and disciplinary

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1 credits, unless the prisoner is paroled and discharged upon
2 satisfactory completion of the parole.

3 (4) If a prisoner subject to disciplinary time is sentenced
4 for consecutive terms, whether received at the same time or at
5 any time during the life of the original sentence, the parole
6 board has jurisdiction over the prisoner for purposes of parole
7 when the prisoner has served the total time of the added minimum
8 terms. The maximum terms of the sentences shall be added to com-
9 pute the new maximum term under this subsection, and discharge
10 shall be issued only after the total of the maximum sentences has
11 been served, unless the prisoner is paroled and discharged upon
12 satisfactory completion of the parole.

13 (5) If a prisoner other than a prisoner subject to disci-
14 plinary time has 1 or more consecutive terms remaining to serve
15 in addition to the term he or she is serving, the parole board
16 may terminate the sentence the prisoner is presently serving at
17 any time after the minimum term of the sentence has been served.

18 (6) A prisoner under sentence for life, ~~or for a term of~~
19 ~~years,~~ other than a prisoner sentenced for life for murder in
20 the first degree, or sentenced for life for a violation of
21 chapter XXXVIII of the Michigan penal code, 1931 PA 328,
22 MCL 750.200 to 750.212a, who has served 10 calendar years of the
23 sentence in the case of a prisoner sentenced for any other crime
24 committed before October 1, 1992, or, except as provided in sub-
25 section ~~-(9)-~~ (10), who has served 20 calendar years of the sen-
26 tence in the case of a prisoner sentenced to imprisonment for
27 life for violating or conspiring to violate section 7401(2)(a)(i)

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1 of the public health code, 1978 PA 368, MCL 333.7401, who has
2 another conviction for a serious crime, or, except as provided in
3 subsection ~~(9)~~ (10), who has served 17-1/2 calendar years of
4 the sentence in the case of a prisoner sentenced to imprisonment
5 for life for violating or conspiring to violate section
6 7401(2)(a)(i) of the public health code, 1978 PA 368,
7 MCL 333.7401, who does not have another conviction for a serious
8 crime, or who has served 15 calendar years of the sentence in the
9 case of a prisoner sentenced for any other crime committed on or
10 after October 1, 1992, is subject to the jurisdiction of the
11 parole board and may be released on parole by the parole board,
12 subject to the following conditions:

13 (a) At the conclusion of 10 calendar years of the prisoner's
14 sentence and ~~every 5 years~~ thereafter AS DETERMINED BY THE
15 PAROLE BOARD until the prisoner is paroled, discharged, or
16 deceased, and in accordance with the procedures described in
17 ~~section 35(4) to (6)~~ SUBSECTION (7), 1 member of the parole
18 board shall interview the prisoner. The interview schedule pre-
19 scribed in this subdivision applies to all prisoners to whom this
20 subsection is applicable, regardless of the date on which they
21 were sentenced.

(B) IN ADDITION TO THE INTERVIEW SCHEDULE PRESCRIBED IN
SUBDIVISION (A), THE PAROLE BOARD SHALL REVIEW THE PRISONER'S FILE
AT THE CONCLUSION OF 15 CALENDAR YEARS OF THE PRISONER'S SENTENCE
AND EVERY 5 YEARS THEREAFTER UNTIL THE PRISONER IS PAROLED,
DISCHARGED, OR DECEASED. A PRISONER WHOSE FILE IS TO BE REVIEWED
UNDER THIS SUBDIVISION SHALL BE NOTIFIED OF THE UPCOMING FILE REVIEW
AT LEAST 30 DAYS BEFORE THE FILE REVIEW TAKES PLACE AND SHALL BE
ALLOWED TO SUBMIT WRITTEN STATEMENTS OR DOCUMENTARY EVIDENCE FOR THE
PAROLE BOARD'S CONSIDERATION IN CONDUCTING THE FILE REVIEW.

22 (C) ~~(b) A parole shall not be granted~~ DECISION TO GRANT OR
23 DENY PAROLE TO a prisoner so sentenced SHALL NOT BE MADE until
24 after a public hearing held in the manner prescribed for pardons
25 and commutations in sections 44 and 45. Notice of the public
26 hearing shall be given to the sentencing judge, or the judge's
27 successor in office, and parole shall not be granted if the

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1 sentencing judge, or the judge's successor in office, files
2 written objections to the granting of the parole within 30 days
3 of receipt of the notice of hearing. The written objections
4 shall be made part of the prisoner's file.

5 (D) ~~(c)~~ A parole granted under this subsection shall be for a
6 period of not less than 4 years and subject to the usual rules
7 pertaining to paroles granted by the parole board. A parole
8 ordered under this subsection is not valid until the transcript
9 of the record is filed with the attorney general whose certifica-
10 tion of receipt of the transcript shall be returnable to the
11 office of the parole board within 5 days. Except for medical
12 records protected under section 2157 of the revised judicature
13 act of 1961, 1961 PA 236, MCL 600.2157, the file of a prisoner
14 granted a parole under this subsection is a public record.

15 (E) ~~(d)~~ A parole shall not be granted under this subsection in
16 the case of a prisoner who is otherwise prohibited by law from
17 parole consideration. In such cases the interview procedures in
18 section 44 shall be followed.

19 (7) AN INTERVIEW CONDUCTED UNDER SUBSECTION (6)(A) IS
20 SUBJECT TO BOTH OF THE FOLLOWING REQUIREMENTS:

21 (A) THE PRISONER SHALL BE GIVEN WRITTEN NOTICE, NOT LESS
22 THAN 30 DAYS BEFORE THE INTERVIEW DATE, STATING THAT THE INTER-
23 VIEW WILL BE CONDUCTED.

24 (B) THE PRISONER MAY BE REPRESENTED AT THE INTERVIEW BY AN
25 INDIVIDUAL OF HIS OR HER CHOICE. THE REPRESENTATIVE SHALL NOT BE
26 ANOTHER PRISONER. A PRISONER IS NOT ENTITLED TO APPOINTED
27 COUNSEL AT PUBLIC EXPENSE. THE PRISONER OR REPRESENTATIVE MAY

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1 PRESENT RELEVANT EVIDENCE IN FAVOR OF HOLDING A PUBLIC HEARING AS
2 DESCRIBED IN SUBSECTION (6)(B).

3 (8) ~~-(7)-~~ In determining whether a prisoner convicted of
4 violating or conspiring to violate section 7401(2)(a)(i) of the
5 public health code, 1978 PA 368, MCL 333.7401, and sentenced to
6 imprisonment for life before October 1, 1998 is to be released on
7 parole, the parole board shall consider all of the following:

8 (a) Whether the violation was part of a continuing series of
9 violations of section 7401 or 7403 of the public health code,
10 1978 PA 368, MCL 333.7401 and 333.7403, by that individual.

11 (b) Whether the violation was committed by the individual in
12 concert with 5 or more other individuals.

13 (c) Any of the following:

14 (i) Whether the individual was a principal administrator,
15 organizer, or leader of an entity that the individual knew or had
16 reason to know was organized, in whole or in part, to commit vio-
17 lations of section 7401 or 7403 of the public health code, 1978
18 PA 368, MCL 333.7401 and 333.7403, and whether the violation for
19 which the individual was convicted was committed to further the
20 interests of that entity.

21 (ii) Whether the individual was a principal administrator,
22 organizer, or leader of an entity that the individual knew or had
23 reason to know committed violations of section 7401 or 7403 of
24 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403,
25 and whether the violation for which the individual was convicted
26 was committed to further the interests of that entity.

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1 (iii) Whether the violation was committed in a drug-free
2 school zone.

3 (iv) Whether the violation involved the delivery of a con-
4 trolled substance to an individual less than 17 years of age or
5 possession with intent to deliver a controlled substance to an
6 individual less than 17 years of age.

7 (9) ~~-(8)-~~ Except as provided in section 34a, a prisoner's
8 release on parole is discretionary with the parole board. The
9 action of the parole board in granting ~~or denying~~ a parole is
10 appealable by ~~the prisoner,~~ the prosecutor of the county from
11 which the prisoner was committed ~~,~~ or the victim of the crime
12 for which the prisoner was convicted. The appeal shall be to the
13 circuit court in the county from which the prisoner was commit-
14 ted, by leave of the court.

15 (10) ~~-(9)-~~ If the sentencing judge, or his or her successor
16 in office, determines on the record that a prisoner described in
17 subsection (6) sentenced to imprisonment for life for violating
18 or conspiring to violate section 7401(2)(a)(i) of the public
19 health code, 1978 PA 368, MCL 333.7401, has cooperated with law
20 enforcement, the prisoner is subject to the jurisdiction of the
21 parole board and may be released on parole as provided in subsec-
22 tion (6), 2-1/2 years earlier than the time otherwise indicated
23 in subsection (6). The prisoner is considered to have cooperated
24 with law enforcement if the court determines on the record that
25 the prisoner had no relevant or useful information to provide.
26 The court shall not make a determination that the prisoner failed
27 or refused to cooperate with law enforcement on grounds that the

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1 defendant exercised his or her constitutional right to trial by
2 jury. If the court determines at sentencing that the defendant
3 cooperated with law enforcement, the court shall include its
4 determination in the judgment of sentence.

5 (11) ~~(10)~~ As used in this section:

6 (a) "Serious crime" means violating or conspiring to violate
7 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
8 333.7545, that is punishable by imprisonment for more than 4
9 years, or an offense against a person in violation of section 83,
10 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b,
11 520c, 520d, 520g, 529, 529a, or 530 of the Michigan penal code,
12 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89,
13 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397,
14 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and
15 750.530.

16 (b) "State correctional facility" means a facility that
17 houses prisoners committed to the jurisdiction of the department,
18 and includes a youth correctional facility operated under section
19 20g by the department or a private vendor.

20 Sec. 44. (1) Subject to the constitutional authority of the
21 governor to grant reprieves, commutations, and pardons, 1 member
22 of the parole board shall interview a prisoner serving a sentence
23 for murder in the first degree or a sentence of imprisonment for
24 life without parole at the conclusion of 10 calendar years and
25 thereafter as determined appropriate by the parole board, ~~but~~
26 ~~not later than every 5 years~~ until such time as the prisoner is
27 granted a reprieve, commutation, or pardon by the governor, or is

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1 deceased. The interview schedule prescribed in this subsection
2 applies to all prisoners to whom this section is applicable,
3 ~~whether sentenced before, on, or after the effective date of the~~
4 ~~1992 amendatory act that amended this subsection~~ REGARDLESS OF
5 WHEN THEY WERE SENTENCED.

6 (2) Upon its own initiation of, or upon receipt of any
7 application for, a reprieve, commutation, or pardon, the parole
8 board shall do all of the following, as applicable:

9 (a) Not more than 60 days after receipt of an application,
10 conduct a review to determine whether the application for a
11 reprieve, commutation, or pardon has merit.

12 (b) Deliver either the written documentation of the initia-
13 tion or the original application with the parole board's determi-
14 nation regarding merit, to the governor and retain a copy of each
15 in its file, pending an investigation and hearing.

16 (c) Within 10 days after initiation, or after determining
17 that an application has merit, forward to the sentencing judge
18 and to the prosecuting attorney of the county having original
19 jurisdiction of the case, or their successors in office, a writ-
20 ten notice of the filing of the application or initiation,
21 together with copies of the application or initiation, any sup-
22 porting affidavits, and a brief summary of the case. Within 30
23 days after receipt of notice of the filing of any application or
24 initiation, the sentencing judge and the prosecuting attorney, or
25 their successors in office, may file information at their dispos-
26 al, together with any objections, in writing, which they may
27 desire to interpose. If the sentencing judge and the prosecuting

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1 attorney, or their successors in office, do not respond within 30
2 days, the parole board shall proceed on the application or
3 initiation.

4 (d) If an application or initiation for commutation is based
5 on physical or mental incapacity, direct the bureau of health
6 care services to evaluate the condition of the prisoner and
7 report on that condition. If the bureau of health care services
8 determines that the prisoner is physically or mentally incapaci-
9 tated, the bureau shall appoint a specialist in the appropriate
10 field of medicine, who is not employed by the department, to
11 evaluate the condition of the prisoner and to report on that
12 condition. These reports are protected by the doctor-patient
13 privilege of confidentiality, except that these reports shall be
14 provided to the governor for his or her review.

15 (e) Within 270 days after initiation by the parole board or
16 receipt of an application that the parole board has determined to
17 have merit pursuant to subdivision (a), make a full investigation
18 and determination on whether or not to proceed to a public
19 hearing.

20 (f) Conduct a public hearing not later than 90 days after
21 making a decision to proceed with consideration of a recommenda-
22 tion for the granting of a reprieve, commutation, or pardon. The
23 public hearing shall be held before a formal recommendation is
24 transmitted to the governor. One member of the parole board who
25 will be involved in the formal recommendation may conduct the
26 hearing, and the public shall be represented by the attorney
27 general or a member of the attorney general's staff.

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1 (g) At least 30 days before conducting the public hearing,
2 provide written notice of the public hearing by mail to the
3 attorney general, the sentencing trial judge, and the prosecuting
4 attorney, or their successors in office, and each victim who
5 requests notice pursuant to the crime victim's rights act, ~~Act~~
6 ~~No. 87 of the Public Acts of 1985, being sections 780.751 to~~
7 ~~780.834 of the Michigan Compiled Laws~~ 1985 PA 87, MCL 780.751 TO
8 780.834.

9 (h) Conduct the public hearing pursuant to the rules promul-
10 gated by the department. Except as otherwise provided in this
11 subdivision, any person having information in connection with the
12 pardon, commutation, or reprieve shall be sworn as a witness. A
13 person who is a victim shall be given an opportunity to address
14 and be questioned by the parole board at the hearing or to submit
15 written testimony for the hearing. In hearing testimony, the
16 parole board shall give liberal construction to any technical
17 rules of evidence.

18 (i) Transmit its formal recommendation to the governor.

19 (j) Make all data in its files available to the governor if
20 the parole board recommends the granting of a reprieve, commuta-
21 tion, or pardon.

22 (3) Except for medical records protected by the
23 doctor-patient privilege of confidentiality, the files of the
24 parole board in cases under this section shall be matters of
25 public record.