



HOUSE BILL No. 5659

April 18, 2000, Introduced by Reps. Lemmons, Switalski, Mans, Jacobs, Spade and Hale and referred to the Committee on Criminal Law and Corrections.

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 section 34 (MCL 791.234), as amended by 1999 PA 191.

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
26 credits, unless the prisoner is paroled and discharged upon
27 satisfactory completion of the parole.

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

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

16 (6) A prisoner ~~under sentence~~ SENTENCED TO IMPRISONMENT
17 for life, other than a prisoner sentenced TO IMPRISONMENT for
18 life for murder in the first degree, or sentenced TO IMPRISONMENT
19 for life for a violation of chapter XXXIII of the Michigan penal
20 code, 1931 PA 328, MCL 750.200 to 750.212a, OR SENTENCED TO
21 IMPRISONMENT FOR LIFE FOR CHILD KIDNAPPING AND SEXUAL ASSAULT
22 UNDER SECTION 349B OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL
23 750.349B, who has served 10 calendar years of the sentence in the
24 case of a prisoner sentenced for any other crime committed before
25 October 1, 1992, or, except as provided in subsection (10), who
26 has served 20 calendar years of the sentence in the case of a
27 prisoner sentenced to imprisonment for life for violating or

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

13 (a) At the conclusion of 10 calendar years of the prisoner's
14 sentence and thereafter as determined by the parole board until
15 the prisoner is paroled, discharged, or deceased, and in accord-
16 ance with the procedures described in subsection (7), 1 member of
17 the parole board shall interview the prisoner. The interview
18 schedule prescribed in this subdivision applies to all prisoners
19 to whom this subsection is applicable, regardless of the date on
20 which they were sentenced.

21 (b) In addition to the interview schedule prescribed in sub-
22 division (a), the parole board shall review the prisoner's file
23 at the conclusion of 15 calendar years of the prisoner's sentence
24 and every 5 years thereafter until the prisoner is paroled, dis-
25 charged, or deceased. A prisoner whose file is to be reviewed
26 under this subdivision shall be notified of the upcoming file
27 review at least 30 days before the file review takes place and

1 shall be allowed to submit written statements or documentary
2 evidence for the parole board's consideration in conducting the
3 file review.

4 (c) A decision to grant or deny parole to a prisoner so sen-
5 tenced shall not be made until after a public hearing held in the
6 manner prescribed for pardons and commutations in sections 44 and
7 45. Notice of the public hearing shall be given to the sentenc-
8 ing judge, or the judge's successor in office, and parole shall
9 not be granted if the sentencing judge, or the judge's successor
10 in 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 (d) 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, 1961 PA 236, MCL 600.2157, the file of a prisoner
22 granted a parole under this subsection is a public record.

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

1 (7) An interview conducted under subsection (6)(a) is
2 subject to both of the following requirements:

3 (a) The prisoner shall be given written notice, not less
4 than 30 days before the interview date, stating that the inter-
5 view will be conducted.

6 (b) The prisoner may be represented at the interview by an
7 individual of his or her choice. The representative shall not be
8 another prisoner. A prisoner is not entitled to appointed coun-
9 sel at public expense. The prisoner or representative may
10 present relevant evidence in favor of holding a public hearing as
11 described in subsection (6)(b).

12 (8) In determining whether a prisoner convicted of violating
13 or conspiring to violate section 7401(2)(a)(i) of the public
14 health code, 1978 PA 368, MCL 333.7401, and sentenced to impris-
15 onment for life before October 1, 1998 is to be released on
16 parole, the parole board shall consider all of the following:

17 (a) Whether the violation was part of a continuing series of
18 violations of section 7401 or 7403 of the public health code,
19 1978 PA 368, MCL 333.7401 and 333.7403, by that individual.

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

22 (c) Any of the following:

23 (i) Whether the individual was a principal administrator,
24 organizer, or leader of an entity that the individual knew or had
25 reason to know was organized, in whole or in part, to commit vio-
26 lations of section 7401 or 7403 of the public health code, 1978
27 PA 368, MCL 333.7401 and 333.7403, and whether the violation for

1 which the individual was convicted was committed to further the
2 interests of that entity.

3 (ii) Whether the individual was a principal administrator,
4 organizer, or leader of an entity that the individual knew or had
5 reason to know committed violations of section 7401 or 7403 of
6 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403,
7 and whether the violation for which the individual was convicted
8 was committed to further the interests of that entity.

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

11 (iv) Whether the violation involved the delivery of a con-
12 trolled substance to an individual less than 17 years of age or
13 possession with intent to deliver a controlled substance to an
14 individual less than 17 years of age.

15 (9) Except as provided in section 34a, a prisoner's release
16 on parole is discretionary with the parole board. The action of
17 the parole board in granting a parole is appealable by the prose-
18 cutor of the county from which the prisoner was committed or the
19 victim of the crime for which the prisoner was convicted. The
20 appeal shall be to the circuit court in the county from which the
21 prisoner was committed, by leave of the court.

22 (10) If the sentencing judge, or his or her successor in
23 office, determines on the record that a prisoner described in
24 subsection (6) sentenced to imprisonment for life for violating
25 or conspiring to violate section 7401(2)(a)(i) of the public
26 health code, 1978 PA 368, MCL 333.7401, has cooperated with law
27 enforcement, the prisoner is subject to the jurisdiction of the

1 parole board and may be released on parole as provided in
2 subsection (6), 2-1/2 years earlier than the time otherwise indi-
3 cated in subsection (6). The prisoner is considered to have
4 cooperated with law enforcement if the court determines on the
5 record that the prisoner had no relevant or useful information to
6 provide. The court shall not make a determination that the pris-
7 oner failed or refused to cooperate with law enforcement on
8 grounds that the defendant exercised his or her constitutional
9 right to trial by jury. If the court determines at sentencing
10 that the defendant cooperated with law enforcement, the court
11 shall include its determination in the judgment of sentence.

12 (11) As used in this section:

13 (a) "Serious crime" means violating or conspiring to violate
14 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
15 333.7545, that is punishable by imprisonment for more than 4
16 years, or an offense against a person in violation of section 83,
17 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b,
18 520c, 520d, 520g, 529, 529a, or 530 of the Michigan penal code,
19 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89,
20 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397,
21 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and
22 750.530.

23 (b) "State correctional facility" means a facility that
24 houses prisoners committed to the jurisdiction of the department,
25 and includes a youth correctional facility operated under section
26 20g by the department or a private vendor.

1 Enacting section 1. This amendatory act does not take
2 effect unless Senate Bill No. _____ or House Bill No. 5658
3 (request no. 05517'99) of the 90th Legislature is enacted into
4 law.