

HOUSE BILL No. 5422

November 10, 2005, Introduced by Reps. Pavlov, Pastor, Shaffer, Stahl, Jones, Steil,
Gaffney, Baxter and Emmons and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending sections 34 and 42 (MCL 791.234 and 791.242), section
34 as amended by 2004 PA 218.

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 a
4 prisoner subject to disciplinary time is subject to the
5 jurisdiction of the parole board when the prisoner has served a
6 period of time equal to the minimum sentence imposed by the court
7 for the crime of which he or she was convicted, less good time and
8 disciplinary credits, if applicable.

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

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

20 (4) If a prisoner subject to disciplinary time is sentenced
21 for consecutive terms, whether received at the same time or at any
22 time during the life of the original sentence, the parole board has
23 jurisdiction over the prisoner for purposes of parole when the
24 prisoner has served the total time of the added minimum terms. The
25 maximum terms of the sentences shall be added to compute the new
26 maximum term under this subsection, and discharge shall be issued
27 only after the total of the maximum sentences has been served,

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

3 (5) If a prisoner other than a prisoner subject to
4 disciplinary time has 1 or more consecutive terms remaining to
5 serve in addition to the term he or she is serving, the parole
6 board may terminate the sentence the prisoner is presently serving
7 at any time after the minimum term of the sentence has been served.

8 (6) A prisoner ~~under sentence~~ **SENTENCED TO IMPRISONMENT** for
9 life ~~—, other than a prisoner sentenced for life for murder in the~~
10 ~~first degree or sentenced for life for a violation of section 16(5)~~
11 ~~or 18(7) or chapter XXXIII of the Michigan penal code, 1931 PA 328,~~
12 ~~MCL 750.16, 750.18, and 750.200 to 750.212a, or section 17764(7) of~~
13 ~~the public health code, 1978 PA 368, MCL 333.17764, who~~ **FOR ANY OF**
14 **THE FOLLOWING IS NOT ELIGIBLE FOR PAROLE AND IS INSTEAD SUBJECT TO**
15 **THE PROVISIONS OF SECTION 44:**

16 (A) **FIRST DEGREE MURDER IN VIOLATION OF SECTION 316 OF THE**
17 **MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.316.**

18 (B) **A VIOLATION OF SECTION 16(5) OR 18(7) OF THE MICHIGAN**
19 **PENAL CODE, 1931 PA 328, MCL 750.16 AND 750.18.**

20 (C) **A VIOLATION OF CHAPTER XXXIII OF THE MICHIGAN PENAL CODE,**
21 **1931 PA 328, MCL 750.200 TO 750.212A.**

22 (D) **A VIOLATION OF SECTION 17764(7) OF THE PUBLIC HEALTH CODE,**
23 **1978 PA 368, MCL 333.17764.**

24 (E) **ANY OTHER VIOLATION FOR WHICH PAROLE ELIGIBILITY IS**
25 **EXPRESSLY DENIED UNDER STATE LAW.**

26 (7) **A PRISONER SENTENCED TO IMPRISONMENT FOR LIFE, OTHER THAN**
27 **A PRISONER DESCRIBED IN SUBSECTION (6), IS SUBJECT TO THE**

1 JURISDICTION OF THE PAROLE BOARD AND MAY BE PLACED ON PAROLE
2 ACCORDING TO THE CONDITIONS PRESCRIBED IN SUBSECTION (8) IF HE OR
3 SHE MEETS ANY OF THE FOLLOWING CRITERIA:

4 (A) EXCEPT AS PROVIDED IN SUBDIVISION (B), (C), OR (D), THE
5 PRISONER has served 10 calendar years of the sentence ~~in the case~~
6 ~~of a prisoner sentenced~~ for a crime committed before October 1,
7 1992 ~~, or , except~~ 15 CALENDAR YEARS OF THE SENTENCE FOR A
8 CRIME COMMITTED ON OR AFTER OCTOBER 1, 1992.

9 (B) EXCEPT as provided in subsection ~~(10)~~ (12), ~~who~~ THE
10 PRISONER has served 20 calendar years of ~~the~~ A sentence ~~in the~~
11 ~~ease of a prisoner sentenced to imprisonment for life~~ for
12 violating or conspiring to violate section 7401(2)(a)(i) of the
13 public health code, 1978 PA 368, MCL 333.7401, ~~who~~ AND has
14 another conviction for a serious crime. ~~, or, except~~

15 (C) EXCEPT as provided in subsection ~~(10)~~ (12), ~~who~~ THE
16 PRISONER has served 17-1/2 calendar years of the sentence ~~in the~~
17 ~~ease of a prisoner sentenced to imprisonment for life~~ for
18 violating or conspiring to violate section 7401(2)(a)(i) of the
19 public health code, 1978 PA 368, MCL 333.7401, ~~who~~ AND does not
20 have another conviction for a serious crime. ~~, or who has served~~
21 ~~15 calendar years of the sentence in the case of a prisoner~~
22 ~~sentenced for a crime committed on or after October 1, 1992, is~~
23 ~~subject to the jurisdiction of the parole board and may be released~~
24 ~~on parole by the parole board,~~

25 (D) THE PRISONER HAS SERVED 25 YEARS OF A SENTENCE IMPOSED
26 UNDER MCL 750.520B(2)(B) FOR FIRST-DEGREE CRIMINAL SEXUAL CONDUCT
27 COMMITTED BY AN INDIVIDUAL 17 YEARS OLD OR OLDER AGAINST AN

1 INDIVIDUAL LESS THAN 13 YEARS OF AGE AND ACCOMPLISHED WHILE ARMED
2 WITH A WEAPON OR ANY ARTICLE USED OR FASHIONED IN A MANNER TO LEAD
3 THE VICTIM TO REASONABLY BELIEVE IT TO BE A WEAPON, OR THROUGH
4 FORCE OR COERCION.

5 (8) A PAROLE GRANTED TO A PRISONER UNDER SUBSECTION (7) IS
6 subject to the following conditions:

7 (a) At the conclusion of 10 calendar years of the prisoner's
8 sentence and thereafter as determined by the parole board until the
9 prisoner is paroled, discharged, or deceased, and in accordance
10 with the procedures described in subsection ~~(7)~~ (9), 1 member of
11 the parole board shall interview the prisoner. The interview
12 schedule prescribed in this subdivision applies to all prisoners to
13 whom ~~this~~ subsection ~~is applicable~~ (7) **APPLIES**, regardless of
14 the date on which they were sentenced.

15 (b) In addition to the interview schedule prescribed in
16 subdivision (a), the parole board shall review the prisoner's file
17 at the conclusion of 15 calendar years of the prisoner's sentence
18 and every 5 years thereafter until the prisoner is paroled,
19 discharged, or deceased. A prisoner whose file is to be reviewed
20 under this subdivision shall be notified of the upcoming file
21 review at least 30 days before the file review takes place and
22 shall be allowed to submit written statements or documentary
23 evidence for the parole board's consideration in conducting the
24 file review.

25 (c) A decision to grant or deny parole to ~~a~~ **THE** prisoner ~~so~~
26 ~~sentenced~~ shall not be made until after a public hearing held in
27 the manner prescribed for pardons and commutations in sections 44

1 and 45. Notice of the public hearing shall be given to the
2 sentencing judge, or the judge's successor in office, and parole
3 shall not be granted if the sentencing judge, or the judge's
4 successor in office, files written objections to the granting of
5 the parole within 30 days of receipt of the notice of hearing. The
6 written objections shall be made part of the prisoner's file.

7 (d) A parole granted under ~~this~~ subsection **(7)(A) TO (C)**
8 shall be for a period of not less than 4 years and subject to the
9 usual rules pertaining to paroles granted by the parole board. **A**
10 **PAROLE GRANTED UNDER SUBSECTION (7)(D) SHALL BE FOR NOT LESS THAN**
11 **10 YEARS AND SUBJECT TO THE USUAL RULE PERTAINING TO PAROLES**
12 **GRANTED BY THE PAROLE BOARD.** A parole ~~ordered~~ **GRANTED** under ~~this~~
13 subsection (7) is not valid until the transcript of the record is
14 filed with the attorney general whose certification of receipt of
15 the transcript shall be returnable to the office of the parole
16 board within 5 days. Except for medical records protected under
17 section 2157 of the revised judicature act of 1961, 1961 PA 236,
18 MCL 600.2157, the file of a prisoner granted a parole under ~~this~~
19 subsection (7) is a public record.

20 ~~—— (e) A parole shall not be granted under this subsection in the~~
21 ~~ease of a prisoner who is otherwise prohibited by law from parole~~
22 ~~consideration. In such cases the interview procedures in section 44~~
23 ~~shall be followed.~~

24 **(9) —(7)—** An interview conducted under subsection ~~—(6)—(a)~~
25 **(8)(A)** is subject to both of the following requirements:

26 (a) The prisoner shall be given written notice, not less than
27 30 days before the interview date, stating that the interview will

1 be conducted.

2 (b) The prisoner may be represented at the interview by an
3 individual of his or her choice. The representative shall not be
4 another prisoner. A prisoner is not entitled to appointed counsel
5 at public expense. The prisoner or representative may present
6 relevant evidence in favor of holding a public hearing as
7 ~~described~~ **ALLOWED** in subsection ~~-(6)(b)-~~ **(8)(B)**.

8 **(10)** ~~-(8)-~~ In determining whether a prisoner convicted of
9 violating or conspiring to violate section 7401(2)(a)(i) of the
10 public health code, 1978 PA 368, MCL 333.7401, and sentenced to
11 imprisonment for life before October 1, 1998 is to be released on
12 parole, the parole board shall consider all of the following:

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

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

18 (c) Any of the following:

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

26 (ii) Whether the individual was a principal administrator,
27 organizer, or leader of an entity that the individual knew or had

1 reason to know committed violations of section 7401 or 7403 of the
2 public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and
3 whether the violation for which the individual was convicted was
4 committed to further the interests of that entity.

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

7 (iv) Whether the violation involved the delivery of a
8 controlled substance to an individual less than 17 years of age or
9 possession with intent to deliver a controlled substance to an
10 individual less than 17 years of age.

11 (11) ~~-(9)-~~ 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 a parole is appealable by
14 the prosecutor of the county from which the prisoner was committed
15 or the victim of the crime for which the prisoner was convicted.
16 The appeal shall be to the circuit court in the county from which
17 the prisoner was committed, by leave of the court.

18 (12) ~~-(10)-~~ If the sentencing judge, or his or her successor
19 in office, determines on the record that a prisoner described in
20 subsection ~~-(6)-~~ **(7)(B) OR (C)** sentenced to imprisonment for life
21 for violating or conspiring to violate section 7401(2)(a)(i) of the
22 public health code, 1978 PA 368, MCL 333.7401, has cooperated with
23 law enforcement, the prisoner is subject to the jurisdiction of the
24 parole board and may be released on parole as provided in
25 subsection ~~-(6)-~~ **(7)(B) OR (C)** 2-1/2 years earlier than the time
26 otherwise indicated in subsection ~~-(6)-~~ **(7)(B) OR (C)**. The prisoner
27 is considered to have cooperated with law enforcement if the court

1 determines on the record that the prisoner had no relevant or
2 useful information to provide. The court shall not make a
3 determination that the prisoner failed or refused to cooperate with
4 law enforcement on grounds that the defendant exercised his or her
5 constitutional right to trial by jury. If the court determines at
6 sentencing that the defendant cooperated with law enforcement, the
7 court shall include its determination in the judgment of sentence.

8 **(13)** ~~-(11)-~~ An individual convicted of violating or conspiring
9 to violate section 7401(2)(a)(ii) or 7403(2)(a)(ii) of the public
10 health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March
11 1, 2003 is eligible for parole after serving the minimum of each
12 sentence imposed for that violation or 10 years of each sentence
13 imposed for that violation, whichever is less.

14 **(14)** ~~-(12)-~~ An individual convicted of violating or conspiring
15 to violate section 7401(2)(a)(iii) or 7403(2)(a)(iii) of the public
16 health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March
17 1, 2003 is eligible for parole after serving the minimum of each
18 sentence imposed for that violation or 5 years of each sentence
19 imposed for that violation, whichever is less.

20 **(15)** ~~-(13)-~~ An individual convicted of violating or conspiring
21 to violate section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public
22 health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March
23 1, 2003 who is sentenced to a term of imprisonment that is
24 consecutive to a term of imprisonment imposed for any other
25 violation of section 7401(2)(a)(i) to (iv) or section 7403(2)(a)(i)
26 to (iv) is eligible for parole after serving 1/2 of the minimum
27 sentence imposed for each violation of section 7401(2)(a)(iv) or

1 7403(2)(a)(iv). This subsection does not apply if the sentence was
2 imposed for a conviction for a new offense committed while the
3 individual is on probation or parole.

4 (16) ~~—(14)—~~ The parole board shall provide notice to the
5 prosecuting attorney of the county in which the individual was
6 convicted before granting parole to the individual under subsection
7 ~~(11), (12), or (13),~~ (14), OR (15).

8 (17) ~~—(15)—~~ As used in this section:

9 (a) "Serious crime" means violating or conspiring to violate
10 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
11 333.7545, that is punishable by imprisonment for more than 4 years,
12 or an offense against a person in violation of section 83, 84, 86,
13 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d,
14 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328,
15 MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316,
16 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
17 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

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

22 Sec. 42. (1) When ~~any~~ A paroled prisoner has faithfully
23 performed all of the conditions and obligations of ~~his~~ parole for
24 the period of time fixed in ~~such~~ **THE** order **OF PAROLE**, and has
25 obeyed all of the rules and regulations adopted by the parole
26 board, ~~he shall be deemed to have~~ **THE PRISONER HAS** served ~~his~~
27 **THE** full sentence ~~—, and the~~ **REQUIRED. THE** parole board shall

1 enter a final order of discharge and issue ~~to~~ the paroled
2 prisoner a certificate of discharge.

3 (2) ~~No parole shall~~ **PAROLE SHALL NOT** be granted for a period
4 less than 2 years in ~~all cases~~ **A CASE** of murder, actual forcible
5 rape, robbery armed, kidnapping, extortion, or breaking and
6 entering an occupied dwelling in the ~~night time except where~~
7 **NIGHTTIME UNLESS** the maximum time remaining to be served on the
8 sentence is less than 2 years.

9 (3) **PAROLE SHALL NOT BE GRANTED FOR A PERIOD LESS THAN 10**
10 **YEARS FOR A PRISONER SENTENCED UNDER SECTION 520B(2)(B) OF THE**
11 **MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B.**

12 Enacting section 1. This amendatory act does not take effect
13 unless Senate Bill No.____ or House Bill No. 5421(request no.
14 04982'05) of the 93rd Legislature is enacted into law.