

HOUSE BILL No. 5829

February 28, 2008, Introduced by Reps. Johnson, Rick Jones, Condino, Alma Smith, Warren, Constan, Cushingberry, Clack, Hammel, Miller, Meadows, Robert Jones, Leland, Young, Tobocman, Virgil Smith, Farrah, Bennett, Gonzales, Sheltroun, Jackson, Accavitti, Sak, Gillard, Scott, Bieda, Garfield, Gaffney, Nofs, Wenke and Cheeks and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending section 34 (MCL 791.234), as amended by 2006 PA 167.

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.

9 (2) Except as provided in section 34a, a prisoner subject to
10 disciplinary time sentenced to an indeterminate sentence and

1 confined in a state correctional facility with a minimum in terms
2 of years is subject to the jurisdiction of the parole board when
3 the prisoner has served a period of time equal to the minimum
4 sentence imposed by the court for the crime of which he or she was
5 convicted.

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

18 (4) ~~IF~~ **EXCEPT AS PROVIDED IN SUBSECTION (17), IF** a prisoner
19 subject to disciplinary time is sentenced for consecutive terms,
20 whether received at the same time or at any time during the life of
21 the original sentence, the parole board has jurisdiction over the
22 prisoner for purposes of parole when the prisoner has served the
23 total time of the added minimum terms. The maximum terms of the
24 sentences shall be added to compute the new maximum term under this
25 subsection, and discharge shall be issued only after the total of
26 the maximum sentences has been served, unless the prisoner is
27 paroled and discharged upon satisfactory completion of the parole.

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

6 (6) A prisoner sentenced to imprisonment for life for any of
7 the following is not eligible for parole and is instead subject to
8 the provisions of section 44:

9 (a) First degree murder in violation of section 316 of the
10 Michigan penal code, 1931 PA 328, MCL 750.316.

11 (b) A violation of section 16(5) or 18(7) of the Michigan
12 penal code, 1931 PA 328, MCL 750.16 and 750.18.

13 (c) A violation of chapter XXXVIII of the Michigan penal code,
14 1931 PA 328, MCL 750.200 to 750.212a.

15 (d) A violation of section 17764(7) of the public health code,
16 1978 PA 368, MCL 333.17764.

17 (e) First degree criminal sexual conduct in violation of
18 section 520b(2)(c) of the Michigan penal code, 1931 PA 328, MCL
19 750.520b.

20 (f) Any other violation for which parole eligibility is
21 expressly denied under state law.

22 (7) A prisoner sentenced to imprisonment for life, other than
23 a prisoner described in subsection (6), is subject to the
24 jurisdiction of the parole board and may be placed on parole
25 according to the conditions prescribed in subsection (8) if he or
26 she meets any of the following criteria:

27 (a) Except as provided in subdivision (b), ~~or~~(c), **OR (D)**, the

1 prisoner has served 10 calendar years of the sentence for a crime
2 committed before October 1, 1992 or 15 calendar years of the
3 sentence for a crime committed on or after October 1, 1992.

4 (b) Except as provided in subsection (12), the prisoner has
5 served 20 calendar years of a sentence for violating, **OR ATTEMPTING**
6 or conspiring to violate, section 7401(2)(a)(i) of the public health
7 code, 1978 PA 368, MCL 333.7401, and has another conviction for a
8 serious crime.

9 (c) Except as provided in subsection (12), the prisoner has
10 served 17-1/2 calendar years of the sentence for violating, **OR**
11 **ATTEMPTING** or conspiring to violate, section 7401(2)(a)(i) of the
12 public health code, 1978 PA 368, MCL 333.7401, and does not have
13 another conviction for a serious crime.

14 **(D) THE PRISONER HAS SERVED 15 YEARS OF A LIFE SENTENCE FOR**
15 **VIOLATING, OR ATTEMPTING OR CONSPIRING TO VIOLATE, SECTION**
16 **7401(2)(A)(ii) OR (iii) OR 7403(2)(A)(ii) OR (iii) OF THE PUBLIC HEALTH**
17 **CODE, 1978 PA 368, MCL 333.7401 AND 333.7403, REGARDLESS OF WHEN**
18 **THE CRIME WAS COMMITTED.**

19 (8) A parole granted to a prisoner under subsection (7) is
20 subject to the following conditions:

21 (a) At the conclusion of 10 calendar years of the prisoner's
22 sentence and thereafter as determined by the parole board until the
23 prisoner is paroled, discharged, or deceased, and in accordance
24 with the procedures described in subsection (9), 1 member of the
25 parole board shall interview the prisoner. The interview schedule
26 prescribed in this subdivision applies to all prisoners to whom
27 subsection (7) applies, regardless of the date on which they were

1 sentenced.

2 (b) In addition to the interview schedule prescribed in
3 subdivision (a), the parole board shall review the prisoner's file
4 at the conclusion of 15 calendar years of the prisoner's sentence
5 and every 5 years thereafter until the prisoner is paroled,
6 discharged, or deceased. A prisoner whose file is to be reviewed
7 under this subdivision shall be notified of the upcoming file
8 review at least 30 days before the file review takes place and
9 shall be allowed to submit written statements or documentary
10 evidence for the parole board's consideration in conducting the
11 file review.

12 (c) A decision to grant or deny parole to the prisoner shall
13 not be made until after a public hearing held in the manner
14 prescribed for pardons and commutations in sections 44 and 45.
15 Notice of the public hearing shall be given to the sentencing
16 judge, or the judge's successor in office, and parole shall not be
17 granted if the sentencing judge, or the judge's successor in
18 office, files written objections to the granting of the parole
19 within 30 days of receipt of the notice of hearing. The written
20 objections shall be made part of the prisoner's file.

21 (d) A parole granted under subsection (7) shall be for a
22 period of not less than 4 years and subject to the usual rules
23 pertaining to paroles granted by the parole board. A parole granted
24 under subsection (7) is not valid until the transcript of the
25 record is filed with the attorney general whose certification of
26 receipt of the transcript shall be returnable to the office of the
27 parole board within 5 days. Except for medical records protected

1 under section 2157 of the revised judicature act of 1961, 1961 PA
2 236, MCL 600.2157, the file of a prisoner granted a parole under
3 subsection (7) is a public record.

4 (9) An interview conducted under subsection (8)(a) is subject
5 to both of the following requirements:

6 (a) The prisoner shall be given written notice, not less than
7 30 days before the interview date, stating that the interview will
8 be conducted.

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

15 (10) In determining whether a prisoner convicted of violating,
16 **OR ATTEMPTING** or conspiring to violate, section 7401(2)(a)(i) of the
17 public health code, 1978 PA 368, MCL 333.7401, and sentenced to
18 imprisonment for life before October 1, 1998 is to be released on
19 parole, the parole board shall consider all of the following:

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

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

25 (c) Any of the following:

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

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

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

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

14 (iv) Whether the violation involved the delivery of a
15 controlled substance to an individual less than 17 years of age or
16 possession with intent to deliver a controlled substance to an
17 individual less than 17 years of age.

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

25 (12) If the sentencing judge, or his or her successor in
26 office, determines on the record that a prisoner described in
27 subsection (7)(b) or (c) sentenced to imprisonment for life for

1 violating, **OR ATTEMPTING** or conspiring to violate, section
2 7401(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401,
3 has cooperated with law enforcement, the prisoner is subject to the
4 jurisdiction of the parole board and may be released on parole as
5 provided in subsection (7)(b) or (c) 2-1/2 years earlier than the
6 time otherwise indicated in subsection (7)(b) or (c). The prisoner
7 is considered to have cooperated with law enforcement if the court
8 determines on the record that the prisoner had no relevant or
9 useful information to provide. The court shall not make a
10 determination that the prisoner failed or refused to cooperate with
11 law enforcement on grounds that the defendant exercised his or her
12 constitutional right to trial by jury. If the court determines at
13 sentencing that the defendant cooperated with law enforcement, the
14 court shall include its determination in the judgment of sentence.

15 (13) **NOTWITHSTANDING SUBSECTIONS (1) AND (2), AN INDIVIDUAL**
16 **CONVICTED OF VIOLATING, OR ATTEMPTING OR CONSPIRING TO VIOLATE,**
17 **SECTION 7401(2)(A)(i) OR 7403(2)(A)(i) OF THE PUBLIC HEALTH CODE,**
18 **1978 PA 368, MCL 333.7401 AND 333.7403, WHOSE OFFENSE OCCURRED**
19 **BEFORE MARCH 1, 2003, AND WHO WAS SENTENCED TO A TERM OF YEARS, IS**
20 **ELIGIBLE FOR PAROLE AFTER SERVING 20 YEARS OF THE SENTENCE IMPOSED**
21 **FOR THE VIOLATION IF THE INDIVIDUAL HAS ANOTHER SERIOUS CRIME OR**
22 **17-1/2 YEARS OF THE SENTENCE IF THE INDIVIDUAL DOES NOT HAVE**
23 **ANOTHER CONVICTION FOR A SERIOUS CRIME, OR AFTER SERVING THE**
24 **MINIMUM SENTENCE IMPOSED FOR THAT VIOLATION, WHICHEVER IS LESS.**

25 (14) ~~(13) An~~ **NOTWITHSTANDING SUBSECTIONS (1) AND (2), AN**
26 **individual WHO WAS** convicted of violating, or **ATTEMPTING OR**
27 conspiring to violate, section 7401(2)(a)(ii) or 7403(2)(a)(ii) of

1 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403,
 2 **WHOSE OFFENSE OCCURRED** before March 1, 2003, **AND WHO WAS SENTENCED**
 3 **ACCORDING TO THOSE SECTIONS AS THEY EXISTED BEFORE MARCH 1, 2003,**
 4 is eligible for parole after serving the minimum of each sentence
 5 imposed for that violation or 10 years of each sentence imposed for
 6 that violation, whichever is less.

7 (15) ~~(14) An~~ **NOTWITHSTANDING SUBSECTIONS (1) AND (2), AN**
 8 individual **WHO WAS** convicted of violating, or **ATTEMPTING OR**
 9 conspiring to violate, section 7401(2)(a)(iii) or 7403(2)(a)(iii) of
 10 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403,
 11 **WHOSE OFFENSE OCCURRED** before March 1, 2003, **AND WHO WAS SENTENCED**
 12 **ACCORDING TO THOSE SECTIONS AS THEY EXISTED BEFORE MARCH 1, 2003,**
 13 is eligible for parole after serving the minimum of each sentence
 14 imposed for that violation or 5 years of each sentence imposed for
 15 that violation, whichever is less.

16 (16) ~~(15) An~~ **NOTWITHSTANDING SUBSECTIONS (1) AND (2), AN**
 17 individual **WHO WAS** convicted of violating, or **ATTEMPTING OR**
 18 conspiring to violate, section 7401(2)(a)(iv) or 7403(2)(a)(iv) of
 19 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403,
 20 **WHOSE OFFENSE OCCURRED** before March 1, 2003, who ~~is~~ **WAS** sentenced
 21 **ACCORDING TO THOSE SECTIONS OF LAW AS THEY EXISTED BEFORE MARCH 1,**
 22 **2003 to a term CONSECUTIVE TERMS** of imprisonment ~~that is~~
 23 ~~consecutive to a term of imprisonment imposed for any other~~
 24 ~~violation~~ **FOR 2 OR MORE VIOLATIONS** of section 7401(2)(a)(i) ~~to (iv)~~
 25 ~~or section 7403(2)(a)(i) to (iv)~~ **7401(2)(A) OR 7403(2)(A),** is
 26 eligible for parole after serving 1/2 of the minimum sentence
 27 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~~ WAS on probation or parole.

4 (17) NOTWITHSTANDING SUBSECTIONS (1), (2), (3), AND (4), AN
5 INDIVIDUAL SENTENCED TO CONSECUTIVE TERMS FOR 2 OR MORE CONVICTIONS
6 FOR VIOLATING, OR CONSPIRING OR ATTEMPTING TO VIOLATE, SECTION
7 7401(2)(A) OR 7403(2)(A) OF THE PUBLIC HEALTH CODE, 1978 PA 368,
8 MCL 333.7401 AND 333.7403, WHOSE OFFENSES OCCURRED BEFORE MARCH 1,
9 2003, AND WHO WAS SENTENCED ACCORDING TO THOSE SECTIONS AS THEY
10 EXISTED BEFORE MARCH 1, 2003, IS SUBJECT TO THE JURISDICTION OF THE
11 PAROLE BOARD AND MAY BE RELEASED ON PAROLE WHEN THE INDIVIDUAL HAS
12 SERVED THE LONGEST PERIOD REQUIRED FOR PAROLE ELIGIBILITY FOR ANY
13 OF THE SENTENCES, AS DETERMINED UNDER SUBSECTIONS (7) AND (12) TO
14 (16). THIS SUBSECTION APPLIES TO ALL SENTENCES IMPOSED FOR
15 VIOLATIONS OF OR ATTEMPTS TO VIOLATE SECTION 7401 OR 7403 OF THE
16 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7401 AND 333.7403, ARISING
17 FROM A SINGLE INCIDENT AND TO ALL SENTENCES IMPOSED FOR CONSPIRING
18 TO VIOLATE SECTION 7401(2)(A) OR 7403(2)(A) OF THE PUBLIC HEALTH
19 CODE, 1978 PA 368, MCL 333.7401 AND 333.7403. SENTENCES ARISING
20 FROM A SINGLE INCIDENT INCLUDE, BUT ARE NOT LIMITED TO, SENTENCES
21 IMPOSED FOR CONVICTIONS ARISING FROM ANY OF THE FOLLOWING:

22 (A) AN ARREST AND RELATED SEARCH OF PROPERTY ASSOCIATED WITH
23 THE INDIVIDUAL.

24 (B) CONTEMPORANEOUS OFFENSES INVOLVING MORE THAN 1 CONTROLLED
25 SUBSTANCE OR MORE THAN 1 QUANTITY OF THE SAME CONTROLLED SUBSTANCE.

26 (C) VIOLATIONS OF SECTION 7401 OR 7403 OF THE PUBLIC HEALTH
27 CODE, 1978 PA 368, MCL 333.7401 AND 333.7403, THAT WERE PROSECUTED

1 IN MORE THAN 1 COUNTY AND INVOLVED THE SAME CONTROLLED SUBSTANCES.

2 (18) ~~(16)~~—The parole board shall provide notice to the
3 prosecuting attorney of the county in which the individual was
4 convicted before granting parole to the individual under subsection
5 (13), (14), ~~or~~ (15), (16), OR (17).

6 (19) ~~(17)~~—As used in this section:

7 (a) "Serious crime" means violating or conspiring to violate
8 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
9 333.7545, that is punishable by imprisonment for more than 4–20
10 years, or an offense against a person in violation of section 83,
11 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c,
12 520d, 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA
13 328, MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316,
14 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
15 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

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

20 Enacting section 1. This amendatory act does not take effect
21 unless all of the following bills of the 94th Legislature are
22 enacted into law:

23 (a) Senate Bill No. ____ or House Bill No. 5830(request no.
24 01480'07 a *).

25 (b) Senate Bill No. ____ or House Bill No. 5831(request no.
26 01480'07 b *).