

# SENATE BILL No. 1600

November 6, 2008, Introduced by Senator SWITALSKI 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 XXXIII 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 conspiring  
6 to violate section 7401(2)(a)(i) of the public health code, 1978 PA  
7 368, MCL 333.7401, and has another conviction for a serious crime.

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

13 **(D) THE PRISONER HAS SERVED 15 YEARS OF A LIFE SENTENCE**  
14 **IMPOSED UNDER FORMER SECTION 7413 OF THE PUBLIC HEALTH CODE, 1978**  
15 **PA 368, FOR VIOLATING 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 AT THE CONCLUSION OF 15 YEARS OF THE PRISONER'S**  
23 **SENTENCE**, and **EVERY 2-1/2 CALENDAR YEARS** thereafter ~~as determined~~  
24 ~~by the parole board~~ until the prisoner is paroled, discharged, or  
25 deceased, and in accordance with the procedures described in  
26 subsection (9), 1 member of the parole board shall interview the  
27 prisoner. The interview schedule prescribed in this subdivision

1 applies to all prisoners to whom subsection (7) applies, regardless  
2 of the date on which they were sentenced.

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

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

22 (C) ~~(d)~~ A parole granted under subsection (7) shall be for a  
23 period of not less than 4 years and **IS** subject to the usual rules  
24 pertaining to paroles granted by the parole board. A parole ~~granted~~  
25 **ORDERED** under subsection (7) is not valid until the transcript of  
26 the record is filed with the attorney general whose certification  
27 of receipt of the transcript shall be returnable to the office of

1 the parole board within 5 days. Except for medical records  
2 protected under section 2157 of the revised judicature act of 1961,  
3 1961 PA 236, MCL 600.2157, the file of a prisoner granted a parole  
4 under subsection (7) is a public record.

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

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

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

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

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

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

26 (c) Any of the following:

27 (i) Whether the individual was a principal administrator,

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

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

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

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

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

26 (12) If the sentencing judge, or his or her successor in  
27 office, determines on the record that a prisoner described in

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

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

26 **(14) ~~(13) An~~ NOTWITHSTANDING SUBSECTIONS (1) AND (2), AN**  
27 **individual WHO WAS** convicted of violating or conspiring to violate

1 section 7401(2)(a)(ii) or 7403(2)(a)(ii) of the public health code,  
2 1978 PA 368, MCL 333.7401 and 333.7403, **WHOSE OFFENSE OCCURRED**  
3 **before March 1, 2003, AND WHO WAS SENTENCED ACCORDING TO THOSE**  
4 **SECTIONS AS THEY EXISTED BEFORE MARCH 1, 2003,** is eligible for  
5 parole after serving the minimum of each sentence imposed for that  
6 violation or 10 years of each sentence imposed for that violation,  
7 whichever is less.

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

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

1 **SECTIONS.** 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 TO VIOLATE SECTION 7401(2) (A) OR**  
7 **7403(2) (A) OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7401 AND**  
8 **333.7403, FOR AN OFFENSE OR OFFENSES COMMITTED BEFORE MARCH 1,**  
9 **2003, AND SENTENCED ACCORDING TO THOSE SECTIONS AS THEY EXISTED**  
10 **BEFORE MARCH 1, 2003, IS SUBJECT TO THE JURISDICTION OF THE PAROLE**  
11 **BOARD AND MAY BE RELEASED ON PAROLE WHEN THE INDIVIDUAL HAS SERVED**  
12 **THE LONGEST PERIOD REQUIRED FOR PAROLE ELIGIBILITY BY ANY OF THE**  
13 **SENTENCES, AS DETERMINED IN SUBSECTIONS (7) AND (12) TO (16).**

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

18 (19) ~~(17)~~As used in this section:

19 (a) "Serious crime" means violating or conspiring to violate  
20 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to  
21 333.7545, that is punishable by imprisonment for more than 4 years,  
22 or an offense against a person in violation of section 83, 84, 86,  
23 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d,  
24 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328,  
25 MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316,  
26 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,  
27 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

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

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

8 (a) Senate Bill No. 1601.

9

10 (b) Senate Bill No. 1602.

11