

HOUSE BILL No. 5080

June 11, 2009, Introduced by Reps. Warren, Smith, Young and Lipton and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending sections 33e and 34 (MCL 791.233e and 791.234), section
33e as added by 1992 PA 181 and section 34 as amended by 2006 PA
167.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 33e. (1) The department shall develop parole guidelines
2 that are consistent with section ~~33(1)(a)~~ **33(1)** and that shall
3 govern the exercise of the parole board's discretion pursuant to
4 sections 34 and 35 as to the release of prisoners on parole under
5 this act. The purpose of the parole guidelines shall be to assist
6 the parole board in making release decisions that enhance the
7 public safety.

1 (2) THE PAROLE GUIDELINES SHALL DO ALL OF THE FOLLOWING:

2 (A) PROVIDE FOR PROTECTION OF THE PUBLIC.

3 (B) REFLECT A PRISONER'S ACTUAL CURRENT RISK FOR REOFFENDING.

4 (C) ENCOURAGE POSITIVE INSTITUTIONAL CONDUCT AND PARTICIPATION
5 IN INSTITUTIONAL PROGRAMS.

6 (D) APPLY TO ALL PRISONERS ELIGIBLE FOR PAROLE, INCLUDING
7 THOSE WITHIN THE PAROLE BOARD'S JURISDICTION PURSUANT TO SECTION
8 34(7) .

9 (3) ~~(2)~~—In developing the parole guidelines, the department
10 shall consider factors including, but not limited to, **ALL OF** the
11 following:

12 (a) The offense for which the prisoner is incarcerated at the
13 time of parole consideration.

14 (b) The prisoner's institutional program performance.

15 (c) The prisoner's institutional conduct.

16 (d) The prisoner's prior criminal record. As used in this
17 subdivision, "prior criminal record" means the recorded criminal
18 history of a prisoner, including all misdemeanor and felony
19 convictions, probation violations, juvenile adjudications for acts
20 that would have been crimes if committed by an adult, parole
21 failures, and delayed sentences.

22 (e) Other relevant factors ~~as~~ determined by the department **TO**
23 **PREDICT THE RISK OF REOFFENDING**, if not otherwise prohibited by
24 law.

25 (4) THE FACTORS EMPLOYED IN DEVELOPING PAROLE GUIDELINES UNDER
26 SUBSECTION (3) SHALL BE WEIGHTED ACCORDING TO THEIR ABILITY TO
27 PREDICT THE RISK OF REOFFENDING.

1 (5) ~~(3)~~—In developing the parole guidelines, the department
2 may consider both of the following factors:

3 (a) The prisoner's statistical risk screening.

4 (b) The prisoner's age.

5 (6) ~~(4)~~—The department shall ensure that the parole guidelines
6 do not create disparities in release decisions based on race,
7 color, national origin, gender, religion, or disability. **IN**
8 **DEVELOPING THE PAROLE GUIDELINES, NO WEIGHT SHALL BE ACCORDED TO**
9 **THE FACT THAT A PRISONER ELIGIBLE FOR PAROLE IS SERVING A LONG**
10 **INDETERMINATE OR LIFE SENTENCE.**

11 (7) ~~(5)~~—The department shall promulgate rules pursuant to the
12 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
13 ~~Acts of 1969, being sections 24.201 to 24.328 of the Michigan~~
14 ~~Compiled Laws 1969 PA 306, MCL 24.201 TO 24.328,~~ which shall
15 prescribe the parole guidelines. ~~The department shall submit the~~
16 ~~proposed rules to the joint committee on administrative rules not~~
17 ~~later than April 1, 1994. Until the rules take effect, the director~~
18 ~~shall require that the parole guidelines be considered by the~~
19 ~~parole board in making release decisions. After the rules take~~
20 ~~effect, the director shall require that the parole board follow the~~
21 ~~parole guidelines.~~

22 (8) ~~(6)~~—The parole board may depart from the parole guidelines
23 by denying parole to a prisoner who has a high probability of
24 parole as determined under the parole guidelines or by granting
25 parole to a prisoner who has a low probability of parole as
26 determined under the parole guidelines. A departure under this
27 subsection shall be for substantial and compelling reasons stated

1 in writing. The parole board shall not use a prisoner's gender,
2 race, ethnicity, alienage, national origin, or religion to depart
3 from the recommended parole guidelines. THE BOARD SHALL NOT BASE A
4 DEPARTURE ON A FACTOR ALREADY TAKEN INTO ACCOUNT BY THE PAROLE
5 GUIDELINES UNLESS THE BOARD FINDS FROM FACTS IN THE RECORD THAT THE
6 FACTOR HAS BEEN GIVEN INADEQUATE OR DISPROPORTIONATE WEIGHT.

7 (9) THE PRISONER MAY APPEAL A DENIAL OF PAROLE BY LEAVE TO THE
8 CIRCUIT COURT THAT IMPOSED THE SENTENCE THAT THE PRISONER IS
9 SERVING ONLY ON 1 OR MORE OF THE FOLLOWING GROUNDS:

10 (A) THE PRISONER SCORED A HIGH PROBABILITY OF RELEASE ON
11 PAROLE, AND THE BOARD DEPARTED FROM THE PAROLE GUIDELINES WITHOUT
12 SUBSTANTIAL AND COMPELLING REASONS.

13 (B) THE DENIAL RESULTED FROM A MATERIAL MISTAKE IN THE PAROLE
14 GUIDELINES SCORING THAT THE BOARD FAILED TO RECONSIDER AFTER
15 RECEIVING NOTICE FROM THE PRISONER.

16 (C) THE DENIAL RESULTED FROM RELIANCE ON INACCURATE OR
17 INCOMPLETE INFORMATION THAT THE BOARD FAILED TO RECONSIDER AFTER
18 RECEIVING NOTICE FROM THE PRISONER.

19 (10) A WRITTEN NOTICE TO A PRISONER STATING THAT HIS OR HER
20 PAROLE IS DENIED SHALL INCLUDE ALL OF THE FOLLOWING:

21 (A) A STATEMENT OF THE PRISONER'S RIGHT TO APPEAL THE DENIAL
22 TO THE EXTENT ALLOWED UNDER SUBSECTION (9).

23 (B) A STATEMENT OF THE APPLICABLE FILING DEADLINES FOR FILING
24 THE APPEAL.

25 (C) A STATEMENT THAT THE PRISONER HAS NO RIGHT TO THE
26 APPOINTMENT OF COUNSEL AT PUBLIC EXPENSE FOR THE APPEAL.

27 (11) ~~(7)~~—Not less than once every 2 years, the department

1 shall review the correlation between the implementation of the
2 parole guidelines and the recidivism rate of paroled prisoners, and
3 shall submit to the joint committee on administrative rules any
4 proposed revisions to the administrative rules that the department
5 considers appropriate after conducting the review.

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

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

21 (3) If a prisoner other than a prisoner subject to
22 disciplinary time is sentenced for consecutive terms, whether
23 received at the same time or at any time during the life of the
24 original sentence, the parole board has jurisdiction over the
25 prisoner for purposes of parole when the prisoner has served the
26 total time of the added minimum terms, less the good time and
27 disciplinary credits allowed by statute. The maximum terms of the

1 sentences shall be added to compute the new maximum term under this
2 subsection, and discharge shall be issued only after the total of
3 the maximum sentences has been served less good time and
4 disciplinary credits, unless the prisoner is paroled and discharged
5 upon satisfactory completion of the parole.

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

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

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

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

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

1 (c) A violation of chapter XXXIII of the Michigan penal code,
2 1931 PA 328, MCL 750.200 to 750.212a.

3 (d) A violation of section 17764(7) of the public health code,
4 1978 PA 368, MCL 333.17764.

5 (e) First degree criminal sexual conduct in violation of
6 section 520b(2)(c) of the Michigan penal code, 1931 PA 328, MCL
7 750.520b.

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

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

15 (a) Except as provided in subdivision (b) or (c), the prisoner
16 has served 10 calendar years of the sentence for a crime committed
17 before October 1, 1992 or 15 calendar years of the sentence for a
18 crime committed on or after October 1, 1992.

19 (b) Except as provided in subsection (12), the prisoner has
20 served 20 calendar years of a sentence for violating or conspiring
21 to violate section 7401(2)(a)(i) of the public health code, 1978 PA
22 368, MCL 333.7401, and has another conviction for a serious crime.

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

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

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

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

21 (c) A decision to grant ~~or deny~~ parole to the prisoner shall
22 not be made until after a public hearing held in the manner
23 prescribed for pardons and commutations in sections 44 and 45.
24 Notice of the public hearing shall be given to the sentencing
25 judge, or the judge's successor in office, and parole shall not be
26 granted if the sentencing judge, or the judge's successor in
27 office, files written objections to the granting of the parole

1 within 30 days of receipt of the notice of hearing. The written
2 objections shall be made part of the prisoner's file. **AN INTERVIEW**
3 **OF A PRISONER WHO IS DETERMINED TO HAVE A HIGH PROBABILITY OF**
4 **RELEASE USING THE PAROLE GUIDELINES SHALL BE RECORDED ON AUDIOTAPE,**
5 **ON VIDEOTAPE, OR BY EQUIVALENT MEANS. IF PAROLE IS DENIED, THE**
6 **RECORD SHALL BE MAINTAINED BY THE DEPARTMENT FOR 6 MONTHS AFTER THE**
7 **DATE ON WHICH THE NOTICE OF DECISION WAS MAILED. IF A PAROLE**
8 **DECISION IS THE SUBJECT OF AN APPEAL, THE INTERVIEW SHALL BE**
9 **TRANSCRIBED AND MADE PART OF THE RECORD.**

10 (d) A parole granted under subsection (7) shall be for a
11 period of not less than 4 years and subject to the usual rules
12 pertaining to paroles granted by the parole board. A parole granted
13 under subsection (7) is not valid until the transcript of the
14 record is filed with the attorney general whose certification of
15 receipt of the transcript shall be returnable to the office of the
16 parole board within 5 days. Except for medical records protected
17 under section 2157 of the revised judicature act of 1961, 1961 PA
18 236, MCL 600.2157, the file of a prisoner granted a parole under
19 subsection (7) is a public record.

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

22 (a) The prisoner shall be given written notice, not less than
23 30 days before the interview date, stating that the interview will
24 be conducted.

25 (b) The prisoner may be represented at the interview by an
26 individual of his or her choice. The representative shall not be
27 another prisoner. A prisoner is not entitled to appointed counsel

1 at public expense. The prisoner or representative may present
2 relevant evidence in favor of holding a public hearing as allowed
3 in subsection (8) (b) .

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

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

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

14 (c) Any of the following:

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

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

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

3 (iv) Whether the violation involved the delivery of a
4 controlled 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 (11) Except as provided in section 34a, a prisoner's release
8 on parole is discretionary with the parole board. The action of the
9 parole board in granting a parole is appealable by the prosecutor
10 of the county from which the prisoner was committed or the victim
11 of the crime for which the prisoner was convicted. The appeal shall
12 be to the circuit court in the county from which the prisoner was
13 committed, by leave of the court.

14 (12) If the sentencing judge, or his or her successor in
15 office, determines on the record that a prisoner described in
16 subsection (7)(b) or (c) sentenced to imprisonment for life for
17 violating or conspiring to violate section 7401(2)(a)(i) of the
18 public health code, 1978 PA 368, MCL 333.7401, has cooperated with
19 law enforcement, the prisoner is subject to the jurisdiction of the
20 parole board and may be released on parole as provided in
21 subsection (7)(b) or (c) 2-1/2 years earlier than the time
22 otherwise indicated in subsection (7)(b) or (c). The prisoner is
23 considered to have cooperated with law enforcement if the court
24 determines on the record that the prisoner had no relevant or
25 useful information to provide. The court shall not make a
26 determination that the prisoner failed or refused to cooperate with
27 law enforcement on grounds that the defendant exercised his or her

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

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

10 (14) An individual convicted of violating or conspiring to
11 violate section 7401(2)(a)(iii) or 7403(2)(a)(iii) of the public health
12 code, 1978 PA 368, MCL 333.7401 and 333.7403, 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 (15) An individual convicted of violating or conspiring to
17 violate section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public health
18 code, 1978 PA 368, MCL 333.7401 and 333.7403, before March 1, 2003
19 who is sentenced to a term of imprisonment that is consecutive to a
20 term of imprisonment imposed for any other violation of section
21 7401(2)(a)(i) to (iv) or section 7403(2)(a)(i) to (iv) is eligible for
22 parole after serving 1/2 of the minimum sentence imposed for each
23 violation of section 7401(2)(a)(iv) or 7403(2)(a)(iv). This
24 subsection does not apply if the sentence was imposed for a
25 conviction for a new offense committed while the individual is on
26 probation or parole.

27 (16) The parole board shall provide notice to the prosecuting

1 attorney of the county in which the individual was convicted before
2 granting parole to the individual under subsection (13), (14), or
3 (15).

4 (17) As used in this section:

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

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