

HOUSE BILL No. 5079

November 10, 2015, Introduced by Reps. Pagel, Pscholka, Poleski, Bumstead, Durhal, Victory, Heise, Muxlow, VerHeulen, Outman, Cox, Garcia, Santana, Jenkins, Vaupel, Canfield, Yanez, Chang, Howrylak, Irwin and Forlini and referred to the Committee on Appropriations.

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending sections 33, 33b, and 34 (MCL 791.233, 791.233b, and 791.234), section 33 as amended by 1998 PA 320, section 33b as amended by 2010 PA 94, and section 34 as amended by 2010 PA 353.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 33. (1) The grant of a parole is subject to all of the
2 following:

3 (a) A prisoner shall not be given liberty on parole until the
4 board has reasonable assurance, after consideration of all of the
5 facts and circumstances, including the prisoner's mental and social
6 attitude, that the prisoner will not become a menace to society or
7 to the public safety.

8 (b) Except as provided in section 34a **AND SECTION 35(10)**, a
9 parole shall not be granted to a prisoner other than a prisoner

1 subject to disciplinary time until the prisoner has served the
2 minimum term imposed by the court less allowances for good time or
3 special good time to which the prisoner may be entitled by statute,
4 except that a prisoner other than a prisoner subject to
5 disciplinary time is eligible for parole before the expiration of
6 his or her minimum term of imprisonment whenever the sentencing
7 judge, or the judge's successor in office, gives written approval
8 of the parole of the prisoner before the expiration of the minimum
9 term of imprisonment.

10 (c) Except as provided in section 34a **AND SECTION 35(10)**, and
11 notwithstanding the provisions of subdivision (b), a parole shall
12 not be granted to a prisoner other than a prisoner subject to
13 disciplinary time sentenced for the commission of a crime described
14 in section 33b(a) to (cc) until the prisoner has served the minimum
15 term imposed by the court less an allowance for disciplinary
16 credits as provided in section 33(5) of 1893 PA 118, MCL 800.33. A
17 prisoner described in this subdivision is not eligible for special
18 parole.

19 (d) Except as provided in section 34a **AND SECTION 35(10)**, a
20 parole shall not be granted to a prisoner subject to disciplinary
21 time until the prisoner has served the minimum term imposed by the
22 court.

23 (e) A prisoner shall not be released on parole until the
24 parole board has satisfactory evidence that arrangements have been
25 made for such honorable and useful employment as the prisoner is
26 capable of performing, for the prisoner's education, or for the
27 prisoner's care if the prisoner is mentally or physically ill or

1 incapacitated.

2 (f) ~~A-EXCEPT AS PROVIDED IN SECTION 35(10),~~ A prisoner whose
3 minimum term of imprisonment is 2 years or more shall not be
4 released on parole unless he or she has either earned a high school
5 diploma or earned its equivalent in the form of a general education
6 development (GED) certificate. The director of the department may
7 waive the restriction imposed by this subdivision as to any
8 prisoner who is over the age of 65 or who was gainfully employed
9 immediately before committing the crime for which he or she was
10 incarcerated. The department of corrections may also waive the
11 restriction imposed by this subdivision as to any prisoner who has
12 a learning disability, who does not have the necessary proficiency
13 in English, or who for some other reason that is not the fault of
14 the prisoner is unable to successfully complete the requirements
15 for a high school diploma or a general education development
16 certificate. If the prisoner does not have the necessary
17 proficiency in English, the department of corrections shall provide
18 English language training for that prisoner necessary for the
19 prisoner to begin working toward the completion of the requirements
20 for a general education development certificate. This subdivision
21 applies to prisoners sentenced for crimes committed after December
22 15, 1998. In providing an educational program leading to a high
23 school degree or general education development certificate, the
24 department shall give priority to prisoners sentenced for crimes
25 committed on or before December 15, 1998.

26 (2) Paroles-in-custody to answer warrants filed by local or
27 out-of-state agencies, or immigration officials, are permissible if

1 an accredited agent of the agency filing the warrant calls for the
2 prisoner to be paroled in custody.

3 (3) Pursuant to the administrative procedures act of 1969,
4 1969 PA 306, MCL 24.201 to 24.328, the parole board may promulgate
5 rules not inconsistent with this act with respect to conditions to
6 be imposed upon prisoners paroled under this act.

7 Sec. 33b. ~~A-EXCEPT FOR A PRISONER GRANTED PAROLE UNDER SECTION~~
8 ~~35(10),~~ A person convicted and sentenced for the commission of any
9 of the following crimes other than a prisoner subject to
10 disciplinary time is not eligible for parole until the person has
11 served the minimum term imposed by the court less an allowance for
12 disciplinary credits as provided in section 33(5) of 1893 PA 118,
13 MCL 800.33, and is not eligible for special parole:

14 (a) Section 13 of the Michigan penal code, 1931 PA 328, MCL
15 750.13.

16 (b) Section 14 of the Michigan penal code, 1931 PA 328, MCL
17 750.14.

18 (c) Section 72, 73, or 75 of the Michigan penal code, 1931 PA
19 328, MCL 750.72, 750.73, and 750.75.

20 (d) Section ~~80, 82~~, 83, 84, 86, 87, 88, 89, or 90 of the
21 Michigan penal code, 1931 PA 328, MCL 750.80, 750.82, 750.83,
22 750.84, 750.86, 750.87, 750.88, 750.89, and 750.90, or former
23 ~~section 85~~ **SECTION 80 OR 85** of that act.

24 (e) Section 91 or 92 of the Michigan penal code, 1931 PA 328,
25 MCL 750.91 and 750.92.

26 (f) Section 110, 112, or 116 of the Michigan penal code, 1931
27 PA 328, MCL 750.110, 750.112, and 750.116.

1 (g) Section 135 ~~, OR 136b(2) , or 136b(3)~~ OR (3) of the
2 Michigan penal code, 1931 PA 328, MCL 750.135 and 750.136b, or
3 former section 136a of that act.

4 (h) Section 158 of the Michigan penal code, 1931 PA 328, MCL
5 750.158.

6 (i) Section 160 of the Michigan penal code, 1931 PA 328, MCL
7 750.160.

8 (j) Former section 171 of the Michigan penal code, 1931 PA
9 328.

10 (k) Section 196 of the Michigan penal code, 1931 PA 328, MCL
11 750.196, or former section 194 of that act.

12 (l) Section 204, 207, 209, or 213 of the Michigan penal code,
13 1931 PA 328, MCL 750.204, 750.207, 750.209, and 750.213, or former
14 section 205, 206 or 208 of that act.

15 (m) Section 224, 226, or 227 of the Michigan penal code, 1931
16 PA 328, MCL 750.224, 750.226, and 750.227.

17 (n) Section 316, 317, 319, 321, 322, 323, 327, 328, or 329 of
18 the Michigan penal code, 1931 PA 328, MCL 750.316, 750.317,
19 750.319, 750.321, 750.322, 750.323, 750.327, 750.328, and 750.329.

20 (o) Former section 333 of the Michigan penal code, 1931 PA
21 328.

22 (p) Section 338, 338a, or 338b of the Michigan penal code,
23 1931 PA 328, MCL 750.338, 750.338a, and 750.338b, or former section
24 341 of that act.

25 (q) Section 349, 349a, or 350 of the Michigan penal code, 1931
26 PA 328, MCL 750.349, 750.349a, and 750.350.

27 (r) Section 357 of the Michigan penal code, 1931 PA 328, MCL

1 750.357.

2 (s) Section 386 or 392 of the Michigan penal code, 1931 PA
3 328, MCL 750.386 and 750.392.

4 (t) Section 397 or 397a of the Michigan penal code, 1931 PA
5 328, MCL 750.397 and 750.397a.

6 (u) Section 436 of the Michigan penal code, 1931 PA 328, MCL
7 750.436.

8 (v) Section 511 of the Michigan penal code, 1931 PA 328, MCL
9 750.511, or former section 517 of that act.

10 (w) Section 520b, 520c, 520d, or 520g of the Michigan penal
11 code, 1931 PA 382, MCL 750.520b, 750.520c, 750.520d, and 750.520g.

12 (x) Section 529, 529a, 530, or 531 of the Michigan penal code,
13 1931 PA 328, MCL 750.529, 750.529a, 750.530, and 750.531.

14 (y) Section 544 of the Michigan penal code, 1931 PA 328, MCL
15 750.544, or former section 545a of that act.

16 (z) Former section 2 of 1950 (Ex Sess) PA 38.

17 (aa) Former section 6 of 1952 PA 117.

18 (bb) Section 1, 2, or 3 of 1968 PA 302, MCL 752.541, 752.542,
19 and 752.543.

20 (cc) Section 7401(2)(a) ~~, 7401(2)(b), OR (B) OR 7402(2)(a) or~~
21 ~~or 7402(2)(b) OR (B)~~ of the public health code, 1978 PA 368, MCL
22 333.7401 and 333.7402.

23 Sec. 34. (1) Except **FOR A PRISONER GRANTED PAROLE UNDER**
24 **SECTION 35(10) OR** as provided in section 34a, a prisoner sentenced
25 to an indeterminate sentence and confined in a state correctional
26 facility with a minimum in terms of years other than a prisoner
27 subject to disciplinary time is subject to the jurisdiction of the

1 parole board when the prisoner has served a period of time equal to
2 the minimum sentence imposed by the court for the crime of which he
3 or she was convicted, less good time and disciplinary credits, if
4 applicable.

5 (2) Except **FOR A PRISONER GRANTED PAROLE UNDER SECTION 35(10)**
6 **OR** as provided in section 34a, a prisoner subject to disciplinary
7 time sentenced to an indeterminate sentence and confined in a state
8 correctional facility with a minimum in terms of years is subject
9 to the jurisdiction of the parole board when the prisoner has
10 served a period of time equal to the minimum sentence imposed by
11 the court for the crime of which he or she was convicted.

12 (3) ~~If~~ **EXCEPT FOR A PRISONER GRANTED PAROLE UNDER SECTION**
13 **35(10), IF** a prisoner other than a prisoner subject to disciplinary
14 time is sentenced for consecutive terms, whether received at the
15 same time or at any time during the life of the original sentence,
16 the parole board has jurisdiction over the prisoner for purposes of
17 parole when the prisoner has served the total time of the added
18 minimum terms, less the good time and disciplinary credits allowed
19 by statute. The maximum terms of the sentences shall be added to
20 compute the new maximum term under this subsection, and discharge
21 shall be issued only after the total of the maximum sentences has
22 been served less good time and disciplinary credits, unless the
23 prisoner is paroled and discharged upon satisfactory completion of
24 the parole.

25 (4) ~~If~~ **EXCEPT FOR A PRISONER GRANTED PAROLE UNDER SECTION**
26 **35(10), IF** a prisoner subject to disciplinary time is sentenced for
27 consecutive terms, whether received at the same time or at any time

1 during the life of the original sentence, the parole board has
2 jurisdiction over the prisoner for purposes of parole when the
3 prisoner has served the total time of the added minimum terms. The
4 maximum terms of the sentences shall be added to compute the new
5 maximum term under this subsection, and discharge shall be issued
6 only after the total of the maximum sentences has been served,
7 unless the prisoner is paroled and discharged upon satisfactory
8 completion of the parole.

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

14 (6) A prisoner sentenced to imprisonment for life for any of
15 the following is ~~not~~ eligible for parole **UNDER SECTION 35(10) ONLY**
16 and is ~~instead~~ **OTHERWISE** subject to the provisions of section 44:

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

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

21 (c) A violation of chapter XXXIII of the Michigan penal code,
22 1931 PA 328, MCL 750.200 to 750.212a.

23 (d) A violation of section 17764(7) of the public health code,
24 1978 PA 368, MCL 333.17764.

25 (e) First degree criminal sexual conduct in violation of
26 section 520b(2)(c) of the Michigan penal code, 1931 PA 328, MCL
27 750.520b.

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

3 (7) ~~A—EXCEPT FOR A PRISONER GRANTED PAROLE UNDER SECTION~~
4 ~~35(10), A~~ prisoner sentenced to imprisonment for life, other than a
5 prisoner described in subsection (6), is subject to the
6 jurisdiction of the parole board and may be placed on parole
7 according to the conditions prescribed in subsection (8) if he or
8 she meets any of the following criteria:

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

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

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

23 (8) A parole granted to a prisoner under subsection (6) **WHO IS**
24 **ELIGIBLE UNDER SECTION 35(10) OR UNDER SUBSECTION (7)** is subject to
25 the following conditions:

26 (a) At the conclusion of 10 calendar years of the prisoner's
27 sentence and thereafter as determined by the parole board until the

1 prisoner is paroled, discharged, or deceased, and in accordance
2 with the procedures described in subsection (9), 1 member of the
3 parole board shall interview the prisoner. The interview schedule
4 prescribed in this subdivision applies to all prisoners to whom
5 subsection (6) OR (7) applies, regardless of the date on which they
6 were sentenced.

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

17 (c) ~~A—EXCEPT FOR A PAROLE GRANTED UNDER SECTION 35(10) FOR~~
18 ~~WHICH A PUBLIC HEARING IS NOT REQUIRED, A~~ decision to grant or deny
19 parole to the prisoner shall not be made until after a public
20 hearing held in the manner prescribed for pardons and commutations
21 in sections 44 and 45. Notice of the public hearing shall be given
22 to the sentencing judge, or the judge's successor in office, and
23 parole shall not be granted if the sentencing judge, or the judge's
24 successor in office, files written objections to the granting of
25 the parole within 30 days of receipt of the notice of hearing. The
26 written objections shall be made part of the prisoner's file.

27 (d) A parole granted under subsection (6) OR (7) shall be for

1 a period of not less than 4 years and subject to the usual rules
2 pertaining to paroles granted by the parole board. ~~A-EXCEPT FOR A~~
3 ~~PAROLE GRANTED UNDER SECTION 35(10) FOR WHICH A PUBLIC HEARING IS~~
4 ~~NOT REQUIRED, A~~ parole granted under subsection (7) is not valid
5 until the transcript of the record is filed with the attorney
6 general whose certification of receipt of the transcript shall be
7 returnable to the office of the parole board within 5 days. Except
8 for medical records protected under section 2157 of the revised
9 judicature act of 1961, 1961 PA 236, MCL 600.2157, the file of a
10 prisoner granted a parole under subsection (6) OR (7) is a public
11 record.

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

14 (a) The prisoner shall be given written notice, not less than
15 30 days before the interview date, stating that the interview will
16 be conducted.

17 (b) The prisoner may be represented at the interview by an
18 individual of his or her choice. The representative shall not be
19 another prisoner. A prisoner is not entitled to appointed counsel
20 at public expense. The prisoner or representative may present
21 relevant evidence in favor of holding a public hearing as allowed
22 in subsection ~~(8)(b)~~-(8)(C).

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

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

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

6 (c) Any of the following:

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

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

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

22 (iv) Whether the violation involved the delivery of a
23 controlled substance to an individual less than 17 years of age or
24 possession with intent to deliver a controlled substance to an
25 individual less than 17 years of age.

26 (11) Except as provided in section 34a, a prisoner's release
27 on parole is discretionary with the parole board. The action of the

1 parole board in granting a parole is appealable by the prosecutor
2 of the county from which the prisoner was committed or the victim
3 of the crime for which the prisoner was convicted. The appeal shall
4 be to the circuit court in the county from which the prisoner was
5 committed, by leave of the court.

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

23 (13) ~~Notwithstanding~~ **EXCEPT FOR A PRISONER GRANTED PAROLE**
24 **UNDER SECTION 35(10), AND NOTWITHSTANDING** subsections (1) and (2),
25 ~~an individual~~ **A PRISONER** convicted of violating, or attempting or
26 conspiring to violate, section 7401(2)(a)(i) or 7403(2)(a)(i) of
27 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403,

1 whose offense occurred before March 1, 2003, and who was sentenced
2 to a term of years, is eligible for parole after serving 20 years
3 of the sentence imposed for the violation if the individual has
4 another serious crime or 17-1/2 years of the sentence if the
5 individual does not have another conviction for a serious crime, or
6 after serving the minimum sentence imposed for that violation,
7 whichever is less.

8 (14) ~~Notwithstanding~~ **EXCEPT FOR A PRISONER GRANTED PAROLE**
9 **UNDER SECTION 35(10), AND NOTWITHSTANDING** subsections (1) and (2),
10 ~~an individual~~ **A PRISONER** who was convicted of violating, or
11 attempting or conspiring to violate, section 7401(2)(a)(ii) or
12 7403(2)(a)(ii) of the public health code, 1978 PA 368, MCL 333.7401
13 and 333.7403, whose offense occurred before March 1, 2003, and who
14 was sentenced according to those sections as they existed before
15 March 1, 2003, is eligible for parole after serving the minimum of
16 each sentence imposed for that violation or 10 years of each
17 sentence imposed for that violation, whichever is less.

18 (15) ~~Notwithstanding~~ **EXCEPT FOR A PRISONER GRANTED PAROLE**
19 **UNDER SECTION 35(10), AND NOTWITHSTANDING** subsections (1) and (2),
20 ~~an individual~~ **A PRISONER** who was convicted of violating, or
21 attempting or conspiring to violate, section 7401(2)(a)(iii) or
22 7403(2)(a)(iii) of the public health code, 1978 PA 368, MCL
23 333.7401 and 333.7403, whose offense occurred before March 1, 2003,
24 and who was sentenced according to those sections as they existed
25 before March 1, 2003, is eligible for parole after serving the
26 minimum of each sentence imposed for that violation or 5 years of
27 each sentence imposed for that violation, whichever is less.

(16) ~~Notwithstanding~~ **EXCEPT FOR A PRISONER GRANTED PAROLE UNDER SECTION 35(10), AND NOTWITHSTANDING** subsections (1) and (2), ~~an individual~~ **A PRISONER** who was convicted of violating, or attempting or conspiring to violate, section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, whose offense occurred before March 1, 2003, who was sentenced according to those sections of law as they existed before March 1, 2003 to consecutive terms of imprisonment for 2 or more violations of section 7401(2)(a) or 7403(2)(a) **OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7401 AND 333.7403**, is eligible for parole after serving 1/2 of the minimum sentence imposed for each violation of section 7401(2)(a)(iv) or 7403(2)(a)(iv) **OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7401 AND 333.7403**. This subsection applies only to sentences imposed for violations of section 7401(2)(a)(iv) or 7403(2)(a)(iv) **OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7401 AND 333.7403**, and does not apply if the sentence was imposed for a conviction for a new offense committed while the individual was on probation or parole.

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

(18) As used in this section:

(a) "Serious crime" means violating or conspiring to violate article 7 of the public health code, 1978 PA 368, MCL 333.7101 to 333.7545, that is punishable by imprisonment for more than 4 years, or an offense against a person in violation of section 83, 84, 86,

1 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d,
2 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328,
3 MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316,
4 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
5 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

6 (b) "State correctional facility" means a facility that houses
7 prisoners committed to the jurisdiction of the department.

8 Enacting section 1. This amendatory act does not take effect
9 unless all of the following bills of the 98th Legislature are
10 enacted into law:

11 (a) Senate Bill No. ____ or House Bill No. 5078 (request no.
12 02406'15).

13 (b) Senate Bill No. ____ or House Bill No. 5080 (request no.
14 02505'15 a).