

# SENATE BILL No. 359

April 20, 1989, Introduced by Senators DINGELL, WELBORN, N. SMITH, ARTHURHULTZ and O'BRIEN and referred to the Committee on Criminal Justice and Urban Affairs.

A bill to amend sections 34 and 44 of Act No. 232 of the Public Acts of 1953, entitled as amended

"An act to revise, consolidate, and codify the laws relating to probationers and probation officers as herein defined, to pardons, reprieves, commutations, and paroles, to the administration of penal institutions, correctional farms, and probation recovery camps, to prison labor and prison industries, and the supervision and inspection of local jails and houses of correction; to provide for the siting of correctional facilities; to create a state department of corrections, and to prescribe its powers and duties; to provide for the transfer to and vesting in said department of powers and duties vested by law in certain other state boards, commissions, and officers, and to abolish certain boards, commissions, and offices the powers and duties of which are hereby transferred; to prescribe the powers and duties of certain other state departments and agencies; to provide for the creation of a local lockup advisory board; to prescribe penalties for the violation of the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act,"

as amended by Act No. 314 of the Public Acts of 1982, being sections 791.234 and 791.244 of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Section 1. Sections 34 and 44 of Act No. 232 of the Public  
2 Acts of 1953, as amended by Act No. 314 of the Public Acts of  
3 1982, being sections 791.234 and 791.244 of the Michigan Compiled  
4 Laws, are amended to read as follows:

5       Sec. 34. (1) A prisoner sentenced to an indeterminate sen-  
6 tence and confined in a state prison or reformatory with a mini-  
7 mum in terms of years shall be subject to the jurisdiction of the  
8 parole board when the prisoner has served a period of time equal  
9 to the minimum sentence imposed by the court for the crime of  
10 which he or she was convicted, less ALLOWANCES FOR good time  
11 ~~allowances~~ OR DISCIPLINARY CREDITS, if applicable.

12       (2) If a prisoner is sentenced for consecutive terms,  
13 whether received at the same time or at any time during the life  
14 of the original sentence, the parole board shall have jurisdic-  
15 tion over the prisoner for purposes of parole when the prisoner  
16 has served the total time of the added minimum terms, less the  
17 good time credit OR DISCIPLINARY CREDITS allowed by statute. The  
18 maximum terms of the sentences shall be added to compute the new  
19 maximum term under this subsection, and discharge shall be issued  
20 only after the total of the maximum sentences has been served  
21 less ALLOWANCES FOR good time ~~allowances~~ OR DISCIPLINARY  
22 CREDITS, unless the prisoner is paroled and discharged upon sat-  
23 isfactory completion of the parole.

24       (3) If a prisoner has 1 or more consecutive terms remaining  
25 to serve in addition to the term he or she is serving, the parole  
26 board may terminate the sentence the prisoner is presently

1 serving at any time after the minimum term of the sentence has  
2 been served.

3 (4) A prisoner under sentence for life or for a term of  
4 years, other than ~~prisoners~~ A PRISONER sentenced for life for  
5 murder in the first degree, ~~and prisoners~~ A PRISONER sentenced  
6 for life or for a minimum term of imprisonment for a major con-  
7 trolled substance offense, AND A PRISONER SENTENCED FOR LIFE FOR  
8 A HEINOUS CRIME, who has served 10 calendar years of the sentence  
9 is subject to the jurisdiction of the parole board and may be  
10 released on parole by the parole board, subject to the following  
11 conditions:

12 (a) One member of the parole board shall interview the pris-  
13 oner at the conclusion of 4 calendar years of the sentence and  
14 biennially thereafter until such time as the prisoner is paroled,  
15 discharged, or deceased.

16 (b) A parole shall not be granted a prisoner so sentenced  
17 until after a public hearing held in the manner prescribed for  
18 pardons and commutations in sections 44(d) to 44(f) and 45.  
19 Notice of the public hearing shall be given to the sentencing  
20 judge, or the judge's successor in office, and parole shall not  
21 be granted if the sentencing judge, or the judge's successor in  
22 office, files written objections to the granting of the parole  
23 within 30 days of receipt of the notice of hearing. The written  
24 objections shall be made part of the prisoner's file.

25 (c) A parole granted under this subsection shall be for a  
26 period of not less than 4 years and subject to the usual rules  
27 pertaining to paroles granted by the parole board. A parole

1 ordered under this subsection shall not become valid until the  
2 transcript of the record is filed with the attorney general whose  
3 certification of receipt of the transcript shall be returnable to  
4 the office of the parole board within 5 days. Except for medical  
5 records protected by section 2157 of THE REVISED JUDICATURE ACT  
6 OF 1961, Act No. 236 of the Public Acts of 1961, being section  
7 600.2157 of the Michigan Compiled Laws, the file of a prisoner  
8 granted a parole under this subsection shall be a public record.

9 (d) A parole shall not be granted under this subsection in  
10 the case of a prisoner who is otherwise prohibited by law from  
11 parole consideration. In such ~~cases~~ A CASE the interview pro-  
12 cedures in section 44 shall be followed.

13 (5) The time of a prisoner's release on parole shall be dis-  
14 cretionary with the parole board. The action of the parole board  
15 in granting or denying a parole shall be appealable to the cir-  
16 cuit court by leave of the court.

17 Sec. 44. Subject to the constitutional authority of the  
18 governor to grant reprieves, commutations, and pardons, 1 member  
19 of the parole board shall interview a prisoner serving a sentence  
20 for murder in the first degree OR A SENTENCE FOR LIFE FOR A HEI-  
21 NOUS CRIME at the conclusion of 4 calendar years and biennially  
22 thereafter until such time as the prisoner is granted a reprieve,  
23 commutation, or pardon by the governor, or is deceased. Upon  
24 receipt of any application for reprieve, commutation, or pardon,  
25 the parole board shall:

26 (a) Deliver the original application to the governor and  
27 retain a copy in its file, pending investigation and hearing.

1       (b) Within 10 days after receipt of any application, forward  
2 to the sentencing judge and to the prosecuting attorney of the  
3 county having original jurisdiction of the case, or their succes-  
4 sors in office, a written notice of the filing of the applica-  
5 tion, together with copies of the application, the supporting  
6 affidavits, and a brief summary of the case. Within 30 days  
7 after receipt of notice of the filing of any application, the  
8 sentencing judge and the prosecuting attorney, or their succes-  
9 sors in office, may file information at their disposal, together  
10 with any objections, in writing, which they may desire to  
11 interpose. If the sentencing judge and the prosecuting attorney,  
12 or their successors in office, do not respond within 30 days, the  
13 parole board shall proceed on the application.

14       (c) In all cases where a commutation application is based on  
15 physical or mental incapacity, direct the office of health care  
16 to evaluate the condition of the prisoner and report on that  
17 condition. If the office of health care determines that the  
18 applicant is physically or mentally incapacitated, the office  
19 shall appoint a specialist in the appropriate field of medicine,  
20 who is not employed by the department, to evaluate the condition  
21 of the prisoner and to report on that condition. These reports  
22 are protected by the doctor-patient privilege of confidentiality,  
23 except that the reports shall be provided to the governor for  
24 review.

25       (d) In all cases where the parole board initiates or the  
26 applicant applies for a reprieve, commutation, or pardon, the  
27 parole board shall conduct a public hearing not later than 90

1 days after making a decision to proceed with consideration of a  
2 recommendation for executive clemency. The public hearing must  
3 be held before a formal recommendation of executive clemency is  
4 made. One member of the parole board may conduct the hearing,  
5 and the public shall be represented by the attorney general or a  
6 member of the attorney general's staff.

7 (e) At least 5 days before a public hearing, written notice  
8 of the public hearing shall be transmitted by mail to the attor-  
9 ney general, the sentencing trial judge, and the prosecuting  
10 attorney, or their successors in office.

11 (f) A public hearing shall be conducted pursuant to the  
12 rules promulgated by the department. Any person having informa-  
13 tion in connection with any application for pardon, commutation,  
14 or reprieve, shall be sworn as a witness. In hearing testimony,  
15 the parole board shall give liberal construction to any technical  
16 rules of evidence.

17 (g) If an application has been made for executive clemency,  
18 the parole board shall make a full investigation and determina-  
19 tion on whether or not to proceed to a public hearing within 270  
20 days of receipt of the application. If the parole board recom-  
21 mends executive clemency, it shall make all data in its files  
22 available to the governor. Except for medical records protected  
23 by the doctor-patient privilege of confidentiality, the files of  
24 the parole board in these cases shall be matters of public  
25 record.