

SENATE BILL No. 57

January 27, 2009, Introduced by Senators SWITALSKI and JACOBS 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 a prisoner other than a prisoner subject to
7 disciplinary time is sentenced for consecutive terms, whether
8 received at the same time or at any time during the life of the
9 original sentence, the parole board has jurisdiction over the
10 prisoner for purposes of parole when the prisoner has served the
11 total time of the added minimum terms, less the good time and
12 disciplinary credits allowed by statute. The maximum terms of the
13 sentences shall be added to compute the new maximum term under this
14 subsection, and discharge shall be issued only after the total of
15 the maximum sentences has been served less good time and
16 disciplinary credits, unless the prisoner is paroled and discharged
17 upon satisfactory completion of the parole.

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

1 has served 10 calendar years of the sentence for a crime committed
2 before October 1, 1992 or 15 calendar years of the sentence for a
3 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 (8) A parole granted to a prisoner under subsection (7) is
14 subject to the following conditions:

15 (a) At the conclusion of 10 calendar years of the prisoner's
16 sentence and **EVERY 2-1/2 YEARS** thereafter ~~as determined by the~~
17 ~~parole board~~ until the prisoner is paroled, discharged, or
18 deceased, and in accordance with the procedures described in
19 subsection (9), 1 member of the parole board shall interview the
20 prisoner. The interview schedule prescribed in this subdivision
21 applies to all prisoners to whom subsection (7) applies, regardless
22 of the date on which they were sentenced.

23 ~~—— (b) In addition to the interview schedule prescribed in~~
24 ~~subdivision (a), the parole board shall review the prisoner's file~~
25 ~~at the conclusion of 15 calendar years of the prisoner's sentence~~
26 ~~and every 5 years thereafter until the prisoner is paroled,~~
27 ~~discharged, or deceased. A prisoner whose file is to be reviewed~~

1 ~~under this subdivision shall be notified of the upcoming file~~
2 ~~review at least 30 days before the file review takes place and~~
3 ~~shall be allowed to submit written statements or documentary~~
4 ~~evidence for the parole board's consideration in conducting the~~
5 ~~file review.~~

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

15 (C) ~~(d)~~—A parole granted under subsection (7) shall be for a
16 period of not less than 4 years and subject to the usual rules
17 pertaining to paroles granted by the parole board. A parole granted
18 under subsection (7) is not valid until the transcript of the
19 record is filed with the attorney general whose certification of
20 receipt of the transcript shall be returnable to the office of the
21 parole board within 5 days. Except for medical records protected
22 under section 2157 of the revised judicature act of 1961, 1961 PA
23 236, MCL 600.2157, the file of a prisoner granted a parole under
24 subsection (7) is a public record.

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

27 (a) The prisoner shall be given written notice, not less than

1 30 days before the interview date, stating that the interview will
2 be conducted.

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

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

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

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

19 (c) Any of the following:

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

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

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

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

8 (iv) Whether the violation involved the delivery of a
9 controlled substance to an individual less than 17 years of age or
10 possession with intent to deliver a controlled substance to an
11 individual less than 17 years of age.

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

19 (12) If the sentencing judge, or his or her successor in
20 office, determines on the record that a prisoner described in
21 subsection (7)(b) or (c) sentenced to imprisonment for life for
22 violating or conspiring to violate section 7401(2)(a)(i) of the
23 public health code, 1978 PA 368, MCL 333.7401, has cooperated with
24 law enforcement, the prisoner is subject to the jurisdiction of the
25 parole board and may be released on parole as provided in
26 subsection (7)(b) or (c) 2-1/2 years earlier than the time
27 otherwise indicated in subsection (7)(b) or (c). The prisoner is

1 considered to have cooperated with law enforcement if the court
2 determines on the record that the prisoner had no relevant or
3 useful information to provide. The court shall not make a
4 determination that the prisoner failed or refused to cooperate with
5 law enforcement on grounds that the defendant exercised his or her
6 constitutional right to trial by jury. If the court determines at
7 sentencing that the defendant cooperated with law enforcement, the
8 court shall include its determination in the judgment of sentence.

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

15 (14) An individual convicted of violating or conspiring to
16 violate section 7401(2)(a)(iii) or 7403(2)(a)(iii) of the public health
17 code, 1978 PA 368, MCL 333.7401 and 333.7403, before March 1, 2003
18 is eligible for parole after serving the minimum of each sentence
19 imposed for that violation or 5 years of each sentence imposed for
20 that violation, whichever is less.

21 (15) An individual convicted of violating or conspiring to
22 violate section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public health
23 code, 1978 PA 368, MCL 333.7401 and 333.7403, before March 1, 2003
24 who is sentenced to a term of imprisonment that is consecutive to a
25 term of imprisonment imposed for any other violation of section
26 7401(2)(a)(i) to (iv) or section 7403(2)(a)(i) to (iv) is eligible for
27 parole after serving 1/2 of the minimum sentence imposed for each

1 violation of section 7401(2)(a)(iv) or 7403(2)(a)(iv). This
2 subsection does not apply if the sentence was imposed for a
3 conviction for a new offense committed while the individual is on
4 probation or parole.

5 (16) The parole board shall provide notice to the prosecuting
6 attorney of the county in which the individual was convicted before
7 granting parole to the individual under subsection (13), (14), or
8 (15).

9 (17) As used in this section:

10 (a) "Serious crime" means violating or conspiring to violate
11 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
12 333.7545, that is punishable by imprisonment for more than 4 years,
13 or an offense against a person in violation of section 83, 84, 86,
14 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d,
15 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328,
16 MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316,
17 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
18 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

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