

SENATE BILL No. 87

February 1, 2001, Introduced by Senator JAYE and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled

"An act to revise, consolidate, and codify the laws relating to probationers and probation officers, to pardons, reprieves, commutations, and paroles, to the administration of correctional institutions, correctional farms, and probation recovery camps, to prisoner labor and correctional industries, and to 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 transferred by this act; to allow for the operation of certain facilities by private entities; 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; to make certain appropriations; to repeal certain parts of this act on specific dates; and to repeal all acts and parts of acts inconsistent with the provisions of this act,"

by amending section 34 (MCL 791.234), as amended by 1999 PA 191.

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
4 a prisoner subject to disciplinary time is subject to the juris-
5 diction of the parole board when the prisoner has served a period
6 of time equal to the minimum sentence imposed by the court for
7 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 con-
11 fined in a state correctional facility with a minimum in terms of
12 years is subject to the jurisdiction of the parole board when the
13 prisoner has served a period of time equal to the minimum sen-
14 tence imposed by the court for the crime of which he or she was
15 convicted.

16 (3) If a prisoner other than a prisoner subject to disci-
17 plinary time is sentenced for consecutive terms, whether received
18 at the same time or at any time during the life of the original
19 sentence, the parole board has jurisdiction over the prisoner for
20 purposes of parole when the prisoner has served the total time of
21 the added minimum terms, less the good time and disciplinary
22 credits allowed by statute. The maximum terms of the sentences
23 shall be added to compute the new maximum term under this subsec-
24 tion, and discharge shall be issued only after the total of the
25 maximum sentences has been served less good time and disciplinary
26 credits, unless the prisoner is paroled and discharged upon
27 satisfactory completion of the parole.

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

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

16 (6) A prisoner ~~under sentence~~ SENTENCED TO IMPRISONMENT
17 for life, other than a prisoner sentenced TO IMPRISONMENT for
18 life WITHOUT PAROLE ELIGIBILITY for murder in the first OR SECOND
19 degree, or sentenced TO IMPRISONMENT for life for a violation of
20 chapter XXXIII of the Michigan penal code, 1931 PA 328,
21 MCL 750.200 to 750.212a, OR SENTENCED TO IMPRISONMENT FOR LIFE
22 WITHOUT PAROLE ELIGIBILITY FOR CRIMINAL SEXUAL CONDUCT, OR SEN-
23 TENCED TO IMPRISONMENT FOR LIFE WITHOUT PAROLE ELIGIBILITY FOR
24 CHILD ABUSE IN THE FIRST DEGREE, who has served 10 calendar years
25 of the sentence in the case of a prisoner sentenced for any other
26 crime committed before October 1, 1992, or, except as provided in
27 subsection (10), who has served 20 calendar years of the sentence

1 in the case of a prisoner 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, who has another
4 conviction for a serious crime, or, except as provided in subsec-
5 tion (10), who has served 17-1/2 calendar years of the sentence
6 in the case of a prisoner sentenced to imprisonment for life for
7 violating or conspiring to violate section 7401(2)(a)(i) of the
8 public health code, 1978 PA 368, MCL 333.7401, who does not have
9 another conviction for a serious crime, or who has served 15 cal-
10 endar years of the sentence in the case of a prisoner sentenced
11 for any other crime committed on or after October 1, 1992, is
12 subject to the jurisdiction of the parole board and may be
13 released on parole by the parole board, subject to the following
14 conditions:

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

23 (b) In addition to the interview schedule prescribed in sub-
24 division (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 evi-
4 dence for the parole board's consideration in conducting the file
5 review.

6 (c) A decision to grant or deny parole to a prisoner so sen-
7 tenced shall not be made until after a public hearing held in the
8 manner prescribed for pardons and commutations in sections 44 and
9 45. Notice of the public hearing shall be given to the sentenc-
10 ing judge, or the judge's successor in office, and parole shall
11 not be granted if the sentencing judge, or the judge's successor
12 in 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 (d) A parole granted under this subsection 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
18 ordered under this subsection is not valid until the transcript
19 of the record is filed with the attorney general whose certifica-
20 tion of receipt of the transcript shall be returnable to the
21 office of the parole board within 5 days. Except for medical
22 records protected under section 2157 of the revised judicature
23 act of 1961, 1961 PA 236, MCL 600.2157, the file of a prisoner
24 granted a parole under this subsection is a public record.

25 (e) A parole shall not be granted under this subsection in
26 the case of a prisoner who is otherwise prohibited by law from

1 parole consideration. In such cases the interview procedures in
2 section 44 shall be followed.

3 (7) An interview conducted under subsection (6)(a) is
4 subject to both of the following requirements:

5 (a) The prisoner shall be given written notice, not less
6 than 30 days before the interview date, stating that the inter-
7 view will be conducted.

8 (b) The prisoner may be represented at the interview by an
9 individual of his or her choice. The representative shall not be
10 another prisoner. A prisoner is not entitled to appointed coun-
11 sel at public expense. The prisoner or representative may
12 present relevant evidence in favor of holding a public hearing as
13 described in subsection (6)(b).

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

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

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

24 (c) Any of the following:

25 (i) Whether the individual was a principal administrator,
26 organizer, or leader of an entity that the individual knew or had
27 reason to know was organized, in whole or in part, to commit

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

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

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

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

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

24 (10) If the sentencing judge, or his or her successor in
25 office, determines on the record that a prisoner described in
26 subsection (6) sentenced to imprisonment for life for violating
27 or conspiring to violate section 7401(2)(a)(i) of the public

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

14 (11) As used in this section:

15 (a) "Serious crime" means violating or conspiring to violate
16 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
17 333.7545, that is punishable by imprisonment for more than 4
18 years, or an offense against a person in violation of section 83,
19 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b,
20 520c, 520d, 520g, 529, 529a, or 530 of the Michigan penal code,
21 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89,
22 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397,
23 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and
24 750.530.

25 (b) "State correctional facility" means a facility that
26 houses prisoners committed to the jurisdiction of the department,

1 and includes a youth correctional facility operated under section
2 20g by the department or a private vendor.

3 Enacting section 1. This amendatory act does not take
4 effect unless Senate Bill No. 86

5 of the 91st Legislature is enacted into
6 law.