

HOUSE BILL No. 5004

July 17, 2003, Introduced by Reps. Bieda, Plakas and Gleason and referred to the Committee on Criminal Justice.

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending section 34 (MCL 791.234), as amended by 2002 PA 670.

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
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
8 and 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
11 confined in a state correctional facility with a minimum in terms

1 of years is subject to the jurisdiction of the parole board when
2 the prisoner has served a period of time equal to the minimum
3 sentence imposed by the court for the crime of which he or she
4 was convicted.

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

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

27 (5) If a prisoner other than a prisoner subject to

1 disciplinary time has 1 or more consecutive terms remaining to
2 serve in addition to the term he or she is serving, the parole
3 board may terminate the sentence the prisoner is presently
4 serving at any time after the minimum term of the sentence has
5 been served.

6 (6) A prisoner under sentence for life, other than a prisoner
7 sentenced for life for murder in the first degree or sentenced
8 for life for a violation **punishable under section 506b(3) or a**
9 **violation** of chapter XXXIII of the Michigan penal code, 1931
10 PA 328, MCL **750.506b and** 750.200 to 750.212a, who has served 10
11 calendar years of the sentence in the case of a prisoner
12 sentenced for a crime committed before October 1, 1992, or,
13 except as provided in subsection (10), who has served 20 calendar
14 years of the sentence in the case of a prisoner sentenced to
15 imprisonment for life for violating or conspiring to violate
16 section 7401(2)(a)(i) of the public health code, 1978 PA 368,
17 MCL 333.7401, who has another conviction for a serious crime, or,
18 except as provided in subsection (10), who has served 17-1/2
19 calendar years of the sentence in the case of a prisoner
20 sentenced to imprisonment for life for violating or conspiring to
21 violate section 7401(2)(a)(i) of the public health code, 1978
22 PA 368, MCL 333.7401, who does not have another conviction for a
23 serious crime, or who has served 15 calendar years of the
24 sentence in the case of a prisoner sentenced for a crime
25 committed on or after October 1, 1992, is subject to the
26 jurisdiction of the parole board and may be released on parole by
27 the parole board, subject to the following conditions:

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

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

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

1 file.

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

12 (e) A parole shall not be granted under this subsection in
13 the case of a prisoner who is otherwise prohibited by law from
14 parole consideration. In such cases the interview procedures in
15 section 44 shall be followed.

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

18 (a) The prisoner shall be given written notice, not less than
19 30 days before the interview date, stating that the interview
20 will be conducted.

21 (b) The prisoner may be represented at the interview by an
22 individual of his or her choice. The representative shall not be
23 another prisoner. A prisoner is not entitled to appointed
24 counsel at public expense. The prisoner or representative may
25 present relevant evidence in favor of holding a public hearing as
26 described in subsection (6)(b).

27 (8) In determining whether a prisoner convicted of violating

1 or conspiring to violate section 7401(2)(a)(i) of the public
2 health code, 1978 PA 368, MCL 333.7401, and sentenced to
3 imprisonment for life before October 1, 1998 is to be released on
4 parole, the parole board shall consider all of the following:

5 (a) Whether the violation was part of a continuing series of
6 violations of section 7401 or 7403 of the public health code,
7 1978 PA 368, MCL 333.7401 and 333.7403, by that individual.

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

10 (c) Any of the following:

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

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

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

26 (iv) Whether the violation involved the delivery of a
27 controlled substance to an individual less than 17 years of age

1 or possession with intent to deliver a controlled substance to an
2 individual less than 17 years of age.

3 (9) Except as provided in section 34a, a prisoner's release
4 on parole is discretionary with the parole board. The action of
5 the parole board in granting a parole is appealable by the
6 prosecutor of the county from which the prisoner was committed or
7 the victim of the crime for which the prisoner was convicted.
8 The appeal shall be to the circuit court in the county from which
9 the prisoner was committed, by leave of the court.

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

27 (11) An individual convicted of violating or conspiring to

1 violate section 7401(2)(a)(ii) or 7403(2)(a)(ii) of the public
2 health code, 1978 PA 368, MCL 333.7401 and 333.7403, before ~~the~~
3 ~~effective date of the amendatory act that added this subsection~~
4 **March 1, 2003** is eligible for parole after serving the minimum of
5 each sentence imposed for that violation or 10 years of each
6 sentence imposed for that violation, whichever is less.

7 (12) An individual convicted of violating or conspiring to
8 violate section 7401(2)(a)(iii) or 7403(2)(a)(iii) of the public
9 health code, 1978 PA 368, MCL 333.7401 and 333.7403, before ~~the~~
10 ~~effective date of the amendatory act that added this subsection~~
11 **March 1, 2003** is eligible for parole after serving the minimum of
12 each sentence imposed for that violation or 5 years of each
13 sentence imposed for that violation, whichever is less.

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

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

1 attorney of the county in which the individual was convicted
2 before granting parole to the individual under subsection (11),
3 (12), or (13).

4 (15) 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
8 years, or an offense against a person in violation of section 83,
9 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b,
10 520c, 520d, 520g, 529, 529a, or 530 of the Michigan penal code,
11 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89,
12 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397,
13 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and
14 750.530.

15 (b) "State correctional facility" means a facility that
16 houses prisoners committed to the jurisdiction of the department,
17 and includes a youth correctional facility operated under section
18 20g by the department or a private vendor.

19 Enacting section 1. This amendatory act does not take
20 effect unless Senate Bill No. _____ or House Bill No. 4913
21 (request no. 01000'03) of the 92nd Legislature is enacted into
22 law.