

SENATE BILL NO. 873

February 10, 1998, Introduced by Senators STILLE, MC MANUS, GOUGEON, BOUCHARD, SHUGARS, STEIL, JAYE, BULLARD, SCHWARZ, ROGERS, CISKY, EMMONS and DE GROW 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 sections 34 and 44 (MCL 791.234 and 791.244), section 34 as amended by 1994 PA 345 and section 44 as amended by 1992 PA 181.

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, plus any disciplinary time accumulated pursuant to
16 section 34 of ~~Act No. 118 of the Public Acts of 1893, being sec-~~
17 ~~tion 800.34 of the Michigan Compiled Laws~~ 1893 PA 118, MCL
18 800.34.

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

1 subsection, and discharge shall be issued only after the total of
2 the maximum sentences has been served less good time and disci-
3 plinary credits, unless the prisoner is paroled and discharged
4 upon satisfactory completion of the parole.

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

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

21 (6) A prisoner under sentence for life or for a term of
22 years, other than a prisoner sentenced for life for murder in the
23 first degree or sentenced for life or for a minimum term of
24 imprisonment for a major controlled substance offense, who has
25 served 10 calendar years of the sentence in the case of a pris-
26 oner sentenced for a crime committed before October 1, 1992, or
27 who has served 15 calendar years of the sentence in the case of a

1 prisoner sentenced for a crime committed on or after October 1,
2 1992, is subject to the jurisdiction of the parole board and may
3 be released on parole by the parole board, subject to the follow-
4 ing conditions:

5 (a) One member of the parole board shall interview the pris-
6 oner at the conclusion of 10 calendar years of the sentence and
7 ~~every 5 years~~ thereafter AS DETERMINED APPROPRIATE BY THE
8 PAROLE BOARD until such time as the prisoner is paroled, dis-
9 charged, or deceased. The interview schedule prescribed in this
10 subdivision applies to all prisoners to whom this subsection is
11 applicable, ~~whether sentenced before, on, or after the effective~~
12 ~~date of the 1992 amendatory act that amended this subdivision~~
13 REGARDLESS OF WHEN THEY WERE SENTENCED.

14 (b) A parole shall not be granted a prisoner so sentenced
15 until after a public hearing held in the manner prescribed for
16 pardons and commutations in sections ~~44(2)(f) to (h)~~ 44 and
17 45. Notice of the public hearing shall be given to the sentenc-
18 ing judge, or the judge's successor in office, and parole shall
19 not be granted if the sentencing judge, or the judge's successor
20 in office, files written objections to the granting of the parole
21 within 30 days of receipt of the notice of hearing. The written
22 objections shall be made part of the prisoner's file.

23 (c) A parole granted under this subsection shall be for a
24 period of not less than 4 years and subject to the usual rules
25 pertaining to paroles granted by the parole board. A parole
26 ordered under this subsection is not valid until the transcript
27 of the record is filed with the attorney general whose

1 certification of receipt of the transcript shall be returnable to
2 the office of the parole board within 5 days. Except for medical
3 records protected under section 2157 of the revised judicature
4 act of 1961, ~~Act No. 236 of the Public Acts of 1961, being sec-~~
5 ~~tion 600.2157 of the Michigan Compiled Laws~~ 1961 PA 236, MCL
6 600.2157, the file of a prisoner granted a parole under this sub-
7 section is a public record.

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

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

20 (8) The provisions of this section regarding prisoners
21 subject to disciplinary time take effect beginning on the effec-
22 tive date of ~~Act No. 217 of the Public Acts of 1994~~ 1994 PA
23 217, as prescribed in enacting section 2 of that amendatory act.

24 Sec. 44. (1) Subject to the constitutional authority of the
25 governor to grant reprieves, commutations, and pardons, 1 member
26 of the parole board shall interview a prisoner serving a sentence
27 for murder in the first degree or a sentence of imprisonment for

1 life without parole at the conclusion of 10 calendar years and
2 thereafter as determined appropriate by the parole board, ~~but~~
3 ~~not later than every 5 years~~ until such time as the prisoner is
4 granted a reprieve, commutation, or pardon by the governor, or is
5 deceased. The interview schedule prescribed in this subsection
6 applies to all prisoners to whom this section is applicable,
7 ~~whether sentenced before, on, or after the effective date of the~~
8 ~~1992 amendatory act that amended this subsection~~ REGARDLESS OF
9 WHEN THEY WERE SENTENCED.

10 (2) Upon its own initiation of, or upon receipt of any
11 application for, a reprieve, commutation, or pardon, the parole
12 board shall do all of the following, as applicable:

13 (a) Not more than 60 days after receipt of an application,
14 conduct a review to determine whether the application for a
15 reprieve, commutation, or pardon has merit.

16 (b) Deliver either the written documentation of the initia-
17 tion or the original application with the parole board's determi-
18 nation regarding merit, to the governor and retain a copy of each
19 in its file, pending an investigation and hearing.

20 (c) Within 10 days after initiation, or after determining
21 that an application has merit, forward to the sentencing judge
22 and to the prosecuting attorney of the county having original
23 jurisdiction of the case, or their successors in office, a writ-
24 ten notice of the filing of the application or initiation,
25 together with copies of the application or initiation, any sup-
26 porting affidavits, and a brief summary of the case. Within 30
27 days after receipt of notice of the filing of any application or

1 initiation, the sentencing judge and the prosecuting attorney, or
2 their successors in office, may file information at their dispos-
3 al, together with any objections, in writing, which they may
4 desire to interpose. If the sentencing judge and the prosecuting
5 attorney, or their successors in office, do not respond within 30
6 days, the parole board shall proceed on the application or
7 initiation.

8 (d) If an application or initiation for commutation is based
9 on physical or mental incapacity, direct the bureau of health
10 care services to evaluate the condition of the prisoner and
11 report on that condition. If the bureau of health care services
12 determines that the prisoner is physically or mentally incapaci-
13 tated, the bureau shall appoint a specialist in the appropriate
14 field of medicine, who is not employed by the department, to
15 evaluate the condition of the prisoner and to report on that
16 condition. These reports are protected by the doctor-patient
17 privilege of confidentiality, except that these reports shall be
18 provided to the governor for his or her review.

19 (e) Within 270 days after initiation by the parole board or
20 receipt of an application that the parole board has determined to
21 have merit pursuant to subdivision (a), make a full investigation
22 and determination on whether or not to proceed to a public
23 hearing.

24 (f) Conduct a public hearing not later than 90 days after
25 making a decision to proceed with consideration of a recommenda-
26 tion for the granting of a reprieve, commutation, or pardon. The
27 public hearing shall be held before a formal recommendation is

1 transmitted to the governor. One member of the parole board who
2 will be involved in the formal recommendation may conduct the
3 hearing, and the public shall be represented by the attorney gen-
4 eral or a member of the attorney general's staff.

5 (g) At least 30 days before conducting the public hearing,
6 provide written notice of the public hearing by mail to the
7 attorney general, the sentencing trial judge, and the prosecuting
8 attorney, or their successors in office, and each victim who
9 requests notice pursuant to the crime victim's rights act, ~~Act~~
10 ~~No. 87 of the Public Acts of 1985, being sections 780.751 to~~
11 ~~780.834 of the Michigan Compiled Laws~~ 1985 PA 87, MCL 780.751 TO
12 780.834.

13 (h) Conduct the public hearing pursuant to the rules promul-
14 gated by the department. Except as otherwise provided in this
15 subdivision, any person having information in connection with the
16 pardon, commutation, or reprieve shall be sworn as a witness. A
17 person who is a victim shall be given an opportunity to address
18 and be questioned by the parole board at the hearing or to submit
19 written testimony for the hearing. In hearing testimony, the
20 parole board shall give liberal construction to any technical
21 rules of evidence.

22 (i) Transmit its formal recommendation to the governor.

23 (j) Make all data in its files available to the governor if
24 the parole board recommends the granting of a reprieve, commuta-
25 tion, or pardon.

26 (3) Except for medical records protected by the
27 doctor-patient privilege of confidentiality, the files of the

1 parole board in cases under this section shall be matters of
2 public record.