

SENATE BILL NO. 383

February 24, 1999, Introduced by Senators JAYE and SHUGARS 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 1998 PA 512.

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 or for a term of years, other than a prisoner sentenced
18 TO IMPRISONMENT for life WITHOUT PAROLE ELIGIBILITY for murder in
19 the first OR SECOND degree, or sentenced TO IMPRISONMENT for life
20 for a violation of chapter XXXIII of the Michigan penal code,
21 1931 PA 328, MCL 750.200 to 750.212a, OR SENTENCED TO IMPRISON-
22 MENT FOR LIFE WITHOUT PAROLE ELIGIBILITY FOR CRIMINAL SEXUAL CON-
23 DUCT, OR SENTENCED TO IMPRISONMENT FOR LIFE WITHOUT PAROLE ELIGI-
24 BILITY FOR CHILD ABUSE IN THE FIRST DEGREE who has served 10 cal-
25 endar years of the sentence in the case of a prisoner sentenced
26 for any other crime committed before October 1, 1992, or, except
27 as provided in subsection (9), who has served 20 calendar years

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

15 (a) At the conclusion of 10 calendar years of the prisoner's
16 sentence and every 5 years thereafter until the prisoner is
17 paroled, discharged, or deceased, and in accordance with the pro-
18 cedures described in section 35(4) to (6), 1 member of the parole
19 board shall interview the prisoner. The interview schedule pre-
20 scribed in this subdivision applies to all prisoners to whom this
21 subsection is applicable, regardless of the date on which they
22 were sentenced.

23 (b) A parole shall not be granted a prisoner so sentenced
24 until after a public hearing held in the manner prescribed for
25 pardons and commutations in sections 44 and 45. Notice of the
26 public hearing shall be given to the sentencing judge, or the
27 judge's successor in office, and parole shall not be granted if

1 the sentencing judge, or the judge's successor in office, files
2 written objections to the granting of the parole within 30 days
3 of receipt of the notice of hearing. The written objections
4 shall be made part of the prisoner's file.

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

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

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

24 (a) Whether the violation was part of a continuing series of
25 violations of section 7401 or 7403 of the public health code,
26 1978 PA 368, MCL 333.7401 and 333.7403, by that individual.

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

3 (c) Any of the following:

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

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

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

19 (iv) Whether the violation involved the delivery of a con-
20 trolled substance to an individual less than 17 years of age or
21 possession with intent to deliver a controlled substance to an
22 individual less than 17 years of age.

23 (8) Except as provided in section 34a, a prisoner's release
24 on parole is discretionary with the parole board. The action of
25 the parole board in granting or denying a parole is appealable by
26 the prisoner, the prosecutor of the county from which the
27 prisoner was committed, or the victim of the crime for which the

1 prisoner was convicted. The appeal shall be to the circuit court
2 in the county from which the prisoner was committed, by leave of
3 the court.

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

21 (10) As used in this section:

22 (a) "Serious crime" means violating or conspiring to violate
23 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
24 333.7545, that is punishable by imprisonment for more than 4
25 years, or an offense against a person in violation of section 83,
26 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b,
27 520c, 520d, 520g, 529, 529a, or 530 of the Michigan penal code,

1 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89,
2 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397,
3 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and
4 750.530.

5 (b) "State correctional facility" means a facility that
6 houses prisoners committed to the jurisdiction of the department,
7 and includes a youth correctional facility operated under section
8 20g by the department or a private vendor.

9 Enacting section 1. This amendatory act does not take
10 effect unless Senate Bill No. 382
11 of the 90th Legislature is enacted into
12 law.