

# SENATE BILL No. 718

August 31, 2005, Introduced by Senator GILBERT 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 2004 PA 218.

**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

1 disciplinary time sentenced to an indeterminate sentence and  
2 confined in a state correctional facility with a minimum in terms  
3 of years is subject to the jurisdiction of the parole board when  
4 the prisoner has served a period of time equal to the minimum  
5 sentence imposed by the court for the crime of which he or she was  
6 convicted.

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

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

1 completion of the parole.

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

7 (6) A prisoner ~~under sentence~~ **SENTENCED TO IMPRISONMENT** for  
8 life ~~, other than a prisoner sentenced for life for murder in the~~  
9 ~~first degree or sentenced for life for a violation of section 16(5)~~  
10 ~~or 18(7) or chapter XXXIII of the Michigan penal code, 1931 PA 328,~~  
11 ~~MCL 750.16, 750.18, and 750.200 to 750.212a, or section 17764(7) of~~  
12 ~~the public health code, 1978 PA 368, MCL 333.17764, who~~ **FOR ANY OF**  
13 **THE FOLLOWING IS NOT ELIGIBLE FOR PAROLE AND IS INSTEAD SUBJECT TO**  
14 **THE PROVISIONS OF SECTION 44:**

15 (A) **FIRST DEGREE MURDER IN VIOLATION OF SECTION 316 OF THE**  
16 **MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.316.**

17 (B) **A VIOLATION OF SECTION 16(5) OR 18(7) OF THE MICHIGAN**  
18 **PENAL CODE, 1931 PA 328, MCL 750.16 AND 750.18.**

19 (C) **A VIOLATION OF CHAPTER XXXIII OF THE MICHIGAN PENAL CODE,**  
20 **1931 PA 328, MCL 750.200 TO 750.212A.**

21 (D) **FIRST DEGREE CRIMINAL SEXUAL CONDUCT IN VIOLATION OF**  
22 **SECTION 520B(2)(B) OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL**  
23 **750.520B.**

24 (E) **ANY OTHER VIOLATION FOR WHICH PAROLE ELIGIBILITY IS**  
25 **EXPRESSLY DENIED UNDER STATE LAW.**

26 (7) **A PRISONER SENTENCED TO IMPRISONMENT FOR LIFE, OTHER THAN**  
27 **A PRISONER DESCRIBED IN SUBSECTION (6), IS SUBJECT TO THE**

1 JURISDICTION OF THE PAROLE BOARD AND MAY BE PLACED ON PAROLE  
2 ACCORDING TO THE CONDITIONS PRESCRIBED IN SUBSECTION (8) IF HE OR  
3 SHE MEETS ANY OF THE FOLLOWING CRITERIA:

4 (A) EXCEPT AS PROVIDED IN SUBDIVISION (B) OR (C), THE PRISONER  
5 has served 10 calendar years of the sentence ~~in the case of a~~  
6 ~~prisoner sentenced~~ for a crime committed before October 1, 1992 ~~,~~  
7 or ~~,~~ ~~except~~ 15 CALENDAR YEARS OF THE SENTENCE FOR A CRIME  
8 COMMITTED ON OR AFTER OCTOBER 1, 1992.

9 (B) EXCEPT as provided in subsection ~~(10)~~ (12), ~~who~~ THE  
10 PRISONER has served 20 calendar years of ~~the~~ A sentence ~~in the~~  
11 ~~case of a prisoner sentenced to imprisonment for life~~ for  
12 violating or conspiring to violate section 7401(2) (a) (i) of the  
13 public health code, 1978 PA 368, MCL 333.7401, ~~who~~ AND has  
14 another conviction for a serious crime. ~~,~~ ~~or,~~ ~~except~~

15 (C) EXCEPT as provided in subsection ~~(10)~~ (12), ~~who~~ THE  
16 PRISONER has served 17-1/2 calendar years of the sentence ~~in the~~  
17 ~~case of a prisoner sentenced to imprisonment for life~~ for  
18 violating or conspiring to violate section 7401(2) (a) (i) of the  
19 public health code, 1978 PA 368, MCL 333.7401, ~~who~~ AND does not  
20 have another conviction for a serious crime. ~~,~~ ~~or who has served~~  
21 ~~15 calendar years of the sentence in the case of a prisoner~~  
22 ~~sentenced for a crime committed on or after October 1, 1992, is~~  
23 ~~subject to the jurisdiction of the parole board and may be released~~  
24 ~~on parole by the parole board,~~

25 (8) A PAROLE GRANTED TO A PRISONER UNDER SUBSECTION (7) IS  
26 subject to the following conditions:

27 (a) At the conclusion of 10 calendar years of the prisoner's

1 sentence and thereafter as determined by the parole board until the  
2 prisoner is paroled, discharged, or deceased, and in accordance  
3 with the procedures described in subsection ~~-(7)-~~ (9), 1 member of  
4 the parole board shall interview the prisoner. The interview  
5 schedule prescribed in this subdivision applies to all prisoners to  
6 whom ~~this~~ subsection ~~is applicable~~ (7) **APPLIES**, regardless of  
7 the date on which they were sentenced.

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

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

27 (d) A parole granted under ~~this~~ subsection (7) shall be for

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

10 ~~—— (c) A parole shall not be granted under this subsection in the~~  
 11 ~~ease of a prisoner who is otherwise prohibited by law from parole~~  
 12 ~~consideration. In such cases the interview procedures in section 44~~  
 13 ~~shall be followed.~~

14 (9) ~~—(7)—~~ An interview conducted under subsection ~~—(6)(a)—~~  
 15 (8) (A) is subject to both of the following requirements:

16 (a) The prisoner shall be given written notice, not less than  
 17 30 days before the interview date, stating that the interview will  
 18 be conducted.

19 (b) The prisoner may be represented at the interview by an  
 20 individual of his or her choice. The representative shall not be  
 21 another prisoner. A prisoner is not entitled to appointed counsel  
 22 at public expense. The prisoner or representative may present  
 23 relevant evidence in favor of holding a public hearing as  
 24 ~~described~~ **ALLOWED** in subsection ~~—(6)(b)—~~ (8) (B) .

25 (10) ~~—(8)—~~ In determining whether a prisoner convicted of  
 26 violating or conspiring to violate section 7401(2) (a) (i) of the  
 27 public health code, 1978 PA 368, MCL 333.7401, and sentenced to

1 imprisonment for life before October 1, 1998 is to be released on  
2 parole, the parole board shall consider all of the following:

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

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

8 (c) Any of the following:

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

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

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

24 (iv) Whether the violation involved the delivery of a  
25 controlled substance to an individual less than 17 years of age or  
26 possession with intent to deliver a controlled substance to an  
27 individual less than 17 years of age.

1           (11) ~~—(9)—~~ Except as provided in section 34a, a prisoner's  
2 release on parole is discretionary with the parole board. The  
3 action of the parole board in granting a parole is appealable by  
4 the prosecutor of the county from which the prisoner was committed  
5 or the victim of the crime for which the prisoner was convicted.  
6 The appeal shall be to the circuit court in the county from which  
7 the prisoner was committed, by leave of the court.

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

25           (13) ~~—(11)—~~ An individual convicted of violating or conspiring  
26 to violate section 7401(2)(a)(ii) or 7403(2)(a)(ii) of the public  
27 health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March



1 1, 2003 is eligible for parole after serving the minimum of each  
2 sentence imposed for that violation or 10 years of each sentence  
3 imposed for that violation, whichever is less.

4 (14) ~~-(12)-~~ An individual convicted of violating or conspiring  
5 to violate section 7401(2)(a)(iii) or 7403(2)(a)(iii) of the public  
6 health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March  
7 1, 2003 is eligible for parole after serving the minimum of each  
8 sentence imposed for that violation or 5 years of each sentence  
9 imposed for that violation, whichever is less.

10 (15) ~~-(13)-~~ An individual convicted of violating or conspiring  
11 to violate section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public  
12 health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March  
13 1, 2003 who is sentenced to a term of imprisonment that is  
14 consecutive to a term of imprisonment imposed for any other  
15 violation of section 7401(2)(a)(i) to (iv) or section 7403(2)(a)(i)  
16 to (iv) is eligible for parole after serving 1/2 of the minimum  
17 sentence imposed for each violation of section 7401(2)(a)(iv) or  
18 7403(2)(a)(iv). This subsection does not apply if the sentence was  
19 imposed for a conviction for a new offense committed while the  
20 individual is on probation or parole.

21 (16) ~~-(14)-~~ The parole board shall provide notice to the  
22 prosecuting attorney of the county in which the individual was  
23 convicted before granting parole to the individual under subsection  
24 ~~-(11), -(12), or~~ (13), (14), OR (15).

25 (17) ~~-(15)-~~ As used in this section:

26 (a) "Serious crime" means violating or conspiring to violate  
27 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to

1 333.7545, that is punishable by imprisonment for more than 4 years,  
2 or an offense against a person in violation of section 83, 84, 86,  
3 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d,  
4 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328,  
5 MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316,  
6 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,  
7 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

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

12 Enacting section 1. This amendatory act does not take effect  
13 unless Senate Bill No. 709

14 of the 93rd Legislature is enacted into law.