

SENATE BILL No. 72

January 31, 2017, Introduced by Senators BIEDA, JONES and KOWALL 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 2016 PA 354.

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
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 was
4 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 the
12 sentences ~~shall~~**MUST** be added to compute the new maximum term under
13 this subsection, and discharge ~~shall~~**MUST** be issued only after the
14 total of the maximum sentences has been served less good time and
15 disciplinary credits, unless the prisoner is paroled and discharged
16 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 any
19 time during the life of the original sentence, the parole board has
20 jurisdiction over the prisoner for purposes of parole when the
21 prisoner has served the total time of the added minimum terms. The
22 maximum terms of the sentences ~~shall~~**MUST** be added to compute the
23 new maximum term under this subsection, and discharge ~~shall~~**MUST** be
24 issued only after the total of the maximum sentences has been
25 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 serving
4 at any time after the minimum term of the sentence has been served.

5 (6) A prisoner sentenced to imprisonment for life for any of
6 the following is not eligible for parole and is instead subject to
7 the provisions of section 44:

8 (a) First degree murder in violation of section 316 of the
9 Michigan penal code, 1931 PA 328, MCL 750.316.

10 (b) A violation of section 16(5) or 18(7) of the Michigan
11 penal code, 1931 PA 328, MCL 750.16 and 750.18.

12 (c) A violation of chapter XXXIII of the Michigan penal code,
13 1931 PA 328, MCL 750.200 to 750.212a.

14 (d) A violation of section 17764(7) of the public health code,
15 1978 PA 368, MCL 333.17764.

16 (e) First degree criminal sexual conduct in violation of
17 section 520b(2)(c) of the Michigan penal code, 1931 PA 328, MCL
18 750.520b.

19 (f) Any other violation for which parole eligibility is
20 expressly denied under state law.

21 (7) A prisoner sentenced to imprisonment for life, other than
22 a prisoner described in subsection (6), is subject to the
23 jurisdiction of the parole board and may be placed on parole
24 according to the conditions prescribed in subsection (8) if he or
25 she meets any of the following criteria:

26 (a) Except as provided in subdivision (b) or (c), the prisoner
27 has served 10 calendar years of the sentence for a crime committed

1 before October 1, 1992 or 15 calendar years of the sentence for a
2 crime committed on or after October 1, 1992.

3 (b) Except as provided in subsection (12), the prisoner has
4 served 20 calendar years of a sentence for violating, or attempting
5 or conspiring to violate, section 7401(2)(a)(i) of the public
6 health code, 1978 PA 368, MCL 333.7401, and has another conviction
7 for a serious crime.

8 (c) Except as provided in subsection (12), the prisoner has
9 served 17-1/2 calendar years of the sentence for violating, or
10 attempting or conspiring to violate, section 7401(2)(a)(i) of the
11 public health code, 1978 PA 368, MCL 333.7401, and does not have
12 another conviction for a serious crime.

13 (8) A parole granted to a prisoner under subsection (7) is
14 subject to the following 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 the
17 prisoner is paroled, discharged, or deceased, and in accordance
18 with the procedures described in subsection (9), 1 member of the
19 parole board shall interview the prisoner. The interview schedule
20 prescribed in this subdivision applies to all prisoners to whom
21 subsection (7) applies, regardless of the date on which they were
22 sentenced.

23 (b) In addition to the interview schedule prescribed in
24 subdivision (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~~**MUST** be allowed to submit written statements or documentary
4 evidence for the parole board's consideration in conducting the
5 file review.

6 (c) A decision to grant or deny parole to the prisoner ~~shall~~
7 **MUST** not be made until after a public hearing held in the manner
8 prescribed for pardons and commutations in sections 44 and 45.
9 Notice of the public hearing ~~shall~~**MUST** be given to the sentencing
10 judge, or the judge's successor in office. Parole ~~shall~~**MUST** not be
11 granted if the sentencing judge files written objections to the
12 granting of the parole within 30 days of receipt of the notice of
13 hearing, but the sentencing judge's written objections ~~shall~~ bar
14 **THE GRANTING OF** parole only if the sentencing judge is still in
15 office in the court before which the prisoner was convicted and
16 sentenced. A sentencing judge's successor in office may file
17 written objections to the granting of parole, but a successor
18 judge's objections ~~shall~~**MUST** not bar the granting of parole under
19 subsection (7). If written objections are filed by either the
20 sentencing judge or the judge's successor in office, they ~~shall~~
21 **MUST** be made part of the prisoner's file.

22 (d) A parole granted under subsection (7) ~~shall~~**MUST** be for a
23 period of not less than 4 years and subject to the usual rules
24 pertaining to paroles granted by the parole board. A parole granted
25 under subsection (7) is not valid until the transcript of the
26 record is filed with the attorney general whose certification of
27 receipt of the transcript ~~shall~~**MUST** be returned to the office of

1 the parole board within 5 days. Except for medical records
2 protected under section 2157 of the revised judicature act of 1961,
3 1961 PA 236, MCL 600.2157, the file of a prisoner granted a parole
4 under subsection (7) is a public record.

5 (9) An interview conducted under subsection (8)(a) is subject
6 to both of the following requirements:

7 (a) The prisoner ~~shall~~**MUST** be given written notice, not less
8 than 30 days before the interview date, stating that the interview
9 will be conducted.

10 (b) The prisoner may be represented at the interview by an
11 individual of his or her choice. The representative ~~shall~~**MUST** not
12 be another prisoner. A prisoner is not entitled to appointed
13 counsel at public expense. The prisoner or representative may
14 present relevant evidence in favor of holding a public hearing as
15 allowed in subsection (8)(c).

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

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

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

26 (c) Any of the following:

27 (i) Whether the individual was a principal administrator,

1 organizer, or leader of an entity that the individual knew or had
2 reason to know was organized, in whole or in part, to commit
3 violations of section 7401 or 7403 of the public health code, 1978
4 PA 368, MCL 333.7401 and 333.7403, and whether the violation for
5 which the individual was convicted was committed to further the
6 interests of that entity.

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

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

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

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

26 (12) If the sentencing judge, or his or her successor in
27 office, determines on the record that a prisoner described in

1 subsection (7) (b) or (c) sentenced to imprisonment for life for
2 violating, or attempting or conspiring to violate, section
3 7401(2) (a) (i) of the public health code, 1978 PA 368, MCL 333.7401,
4 has cooperated with law enforcement, the prisoner is subject to the
5 jurisdiction of the parole board and may be released on parole as
6 provided in subsection (7) (b) or (c) 2-1/2 years earlier than the
7 time otherwise indicated in subsection (7) (b) or (c). The prisoner
8 is considered to have cooperated with law enforcement if the court
9 determines on the record that the prisoner had no relevant or
10 useful information to provide. The court shall not make a
11 determination that the prisoner failed or refused to cooperate with
12 law enforcement on grounds that the defendant exercised his or her
13 constitutional right to trial by jury. If the court determines at
14 sentencing that the defendant cooperated with law enforcement, the
15 court shall include its determination in the judgment of sentence.

16 (13) Notwithstanding subsections (1) and (2), ~~an individual~~**A**
17 **PRISONER** convicted of violating, or attempting or conspiring to
18 violate, section 7401(2) (a) (i) or 7403(2) (a) (i) of the public
19 health code, 1978 PA 368, MCL 333.7401 and 333.7403, whose offense
20 occurred before March 1, 2003, and who was sentenced to a term of
21 years, is eligible for parole after serving 20 years of the
22 sentence imposed for the violation if the individual has another
23 serious crime or 17-1/2 years of the sentence if the individual
24 does not have another conviction for a serious crime, or after
25 serving the minimum sentence imposed for that violation, whichever
26 is less.

27 (14) Notwithstanding subsections (1) and (2), ~~an individual~~**A**

1 **PRISONER** who was convicted of violating, or attempting or
2 conspiring to violate, section 7401(2)(a)(ii) or 7403(2)(a)(ii) of
3 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403,
4 whose offense occurred before March 1, 2003, and who was sentenced
5 according to those sections as they existed before March 1, 2003,
6 is eligible for parole after serving the minimum of each sentence
7 imposed for that violation or 10 years of each sentence imposed for
8 that violation, whichever is less.

9 (15) Notwithstanding subsections (1) and (2), ~~an individual~~**A**
10 **PRISONER** who was convicted of violating, or attempting or
11 conspiring to violate, section 7401(2)(a)(iii) or 7403(2)(a)(iii)
12 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403,
13 whose offense occurred before March 1, 2003, and who was sentenced
14 according to those sections as they existed before March 1, 2003,
15 is eligible for parole after serving the minimum of each sentence
16 imposed for that violation or 5 years of each sentence imposed for
17 that violation, whichever is less.

18 (16) Notwithstanding subsections (1) and (2), ~~an individual~~**A**
19 **PRISONER** who was convicted of violating, or attempting or
20 conspiring to violate, section 7401(2)(a)(iv) or 7403(2)(a)(iv) of
21 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403,
22 whose offense occurred before March 1, 2003, who was sentenced
23 according to those sections of law as they existed before March 1,
24 2003 to consecutive terms of imprisonment for 2 or more violations
25 of section 7401(2)(a) or 7403(2)(a) **OF THE PUBLIC HEALTH CODE, 1978**
26 **PA 368, MCL 333.7401 AND 333.7403**, is eligible for parole after
27 serving 1/2 of the minimum sentence imposed for each violation of

1 section 7401(2) (a) (iv) or 7403(2) (a) (iv) OF THE PUBLIC HEALTH CODE,
2 1978 PA 368, MCL 333.7401 AND 333.7403. This subsection applies
3 only to sentences imposed for violations of section 7401(2) (a) (iv)
4 or 7403(2) (a) (iv) OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
5 333.7401 AND 333.7403, and does not apply if the sentence was
6 imposed for a conviction for a new offense committed while the
7 individual was on probation or parole.

8 (17) NOTWITHSTANDING SUBSECTIONS (1) AND (2), A PRISONER WHO
9 WAS CONVICTED OF VIOLATING, OR ATTEMPTING OR CONSPIRING TO VIOLATE,
10 SECTION 7401(2) (A) (iii) OR 7403(2) (A) (iii) OF THE PUBLIC HEALTH
11 CODE, 1978 PA 368, MCL 333.7401 AND 333.7403, WHO HAD A PRIOR
12 CONVICTION FOR A VIOLATION OF SECTION 7401(2) (A) (iii) OR
13 7403(2) (A) (iii) OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
14 333.7401 AND 333.7403, AND WHO WAS SENTENCED TO LIFE WITHOUT PAROLE
15 UNDER SECTION 7413(1) OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
16 333.7413, ACCORDING TO THAT SECTION AS IT EXISTED BEFORE THE
17 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION IS
18 ELIGIBLE FOR PAROLE AFTER SERVING 5 YEARS OF EACH SENTENCE IMPOSED
19 FOR THAT VIOLATION.

20 (18) ~~(17)~~—The parole board shall provide notice to the
21 prosecuting attorney of the county in which the ~~individual~~—PRISONER
22 was convicted before granting parole to the ~~individual~~—PRISONER
23 under subsection (13), (14), (15), ~~or~~—(16), OR (17).

24 (19) ~~(18)~~—As used in this section:

25 (a) "Serious crime" means violating or conspiring to violate
26 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
27 333.7545, that is punishable by imprisonment for more than 4 years,

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

7 (b) "State correctional facility" means a facility that houses
8 prisoners committed to the jurisdiction of the department.

9 Enacting section 1. This amendatory act takes effect 90 days
10 after the date it is enacted into law.

11 Enacting section 2. This amendatory act does not take effect
12 unless Senate Bill No. 73

13 of the 99th Legislature is enacted into law.