

HOUSE BILL No. 6510

November 7, 2002, Introduced by Reps. McConico and Thomas 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 1999 PA 191.

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

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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 disci-
6 plinary time is sentenced for consecutive terms, whether received
7 at the same time or at any time during the life of the original
8 sentence, the parole board has jurisdiction over the prisoner for
9 purposes of parole when the prisoner has served the total time of
10 the added minimum terms, less the good time and disciplinary
11 credits allowed by statute. The maximum terms of the sentences
12 shall be added to compute the new maximum term under this subsec-
13 tion, and discharge shall be issued only after the total of the
14 maximum sentences has been served less good time and disciplinary
15 credits, unless the prisoner is paroled and discharged upon sat-
16 isfactory 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 com-
23 pute 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.

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

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

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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 accord-
4 ance with the procedures described in subsection (7), 1 member of
5 the parole board shall interview the prisoner. The interview
6 schedule prescribed in this subdivision applies to all prisoners
7 to whom this subsection is applicable, regardless of the date on
8 which they were sentenced.

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

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

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

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

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

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

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

26 ~~(8) In determining whether a prisoner convicted of~~
27 ~~violating or conspiring to violate section 7401(2)(a)(i) of the~~

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1 ~~public health code, 1978 PA 368, MCL 333.7401, and sentenced to~~
2 ~~imprisonment for life before October 1, 1998 is to be released on~~
3 ~~parole, the parole board shall consider all of the following:~~

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

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

9 ~~(c) Any of the following:~~

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

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

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

25 ~~(iv) Whether the violation involved the delivery of a con-~~
26 ~~trolled substance to an individual less than 17 years of age or~~

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

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

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

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1 (10) AN INDIVIDUAL CONVICTED OF VIOLATING OR CONSPIRING TO
2 VIOLATE SECTION 7401(2)(A)(ii) OR 7403(2)(A)(ii) OF THE PUBLIC
3 HEALTH CODE, 1978 PA 368, MCL 333.7401 AND 333.7403, BEFORE THE
4 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION
5 IS ELIGIBLE FOR PAROLE AFTER SERVING THE MINIMUM OF EACH SENTENCE
6 IMPOSED FOR THAT VIOLATION OR 10 YEARS, WHICHEVER IS LESS.

7 (11) 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 IS ELIGIBLE FOR PAROLE AFTER SERVING THE MINIMUM OF EACH SENTENCE
12 IMPOSED FOR THAT VIOLATION OR 5 YEARS, WHICHEVER IS LESS.

13 (12) AN INDIVIDUAL CONVICTED OF VIOLATING OR CONSPIRING TO
14 VIOLATE SECTION 7401(2)(A)(iv) OR 7403(2)(A)(iv) OF THE PUBLIC
15 HEALTH CODE, 1978 PA 368, MCL 333.7401 AND 333.7403, BEFORE THE
16 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION
17 AND SENTENCED TO CONSECUTIVE TERMS OF IMPRISONMENT FOR THOSE VIO-
18 LATIONS IS ELIGIBLE FOR PAROLE AFTER SERVING 1/2 OF THE MINIMUM
19 SENTENCE IMPOSED FOR EACH VIOLATION.

20 (13) ~~(11)~~ As used in this section:

21 (a) "Serious crime" means violating or conspiring to violate
22 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
23 333.7545, that is punishable by imprisonment for more than 4
24 years, or an offense against a person in violation of section 83,
25 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b,
26 520c, 520d, 520g, 529, 529a, or 530 of the Michigan penal code,
27 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89,

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1 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397,
2 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and
3 750.530.

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

8 Enacting section 1. This amendatory act does not take
9 effect unless all of the following bills of the 91st Legislature
10 are enacted into law:

11 (a) House Bill No. 5394.

12 (b) House Bill No. 5395.