

Act No. 199  
Public Acts of 1994  
Approved by the Governor  
June 19, 1994  
Filed with the Secretary of State  
June 21, 1994

**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1994**

Introduced by Senators Kelly Miller Korvisto Hart Faust Bouchard and Geake

# **ENROLLED SENATE BILL No. 781**

AN ACT to amend sections 33b and 34a of Act No 232 of the Public Acts of 1953 entitled as amended 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 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 section 33b as amended by Act No 252 of the Public Acts of 1989 and section 34a as added by Act No 22 of the Public Acts of 1992 being sections 791 233b and 791 234a of the Michigan Compiled Laws

*The People of the State of Michigan enact*

Section 1 Sections 33b and 34a of Act No 232 of the Public Acts of 1953 section 33b as amended by Act No 252 of the Public Acts of 1989 and section 34a as added by Act No 22 of the Public Acts of 1992 being sections 791 233b and 791 234a of the Michigan Compiled Laws are amended to read as follows

Sec 33b A person convicted and sentenced for the commission of a crime that is a violation of any of the following is not eligible for parole until the person has served the minimum term imposed by the court less an allowance for disciplinary credits as provided in section 33(5) of Act No 118 of the Public Acts of 1893 being section 800 33 of the Michigan Compiled Laws and is not eligible for special parole

(a) Section 13 of the Michigan penal code Act No 328 of the Public Acts of 1931 as amended being section 750 13 of the Michigan Compiled Laws

- (b) Section 14 of Act No 328 of the Public Acts of 1931 as amended being section 750 14 of the Michigan Compiled Laws
- (c) Section 72 73 75 or 80 of Act No 328 of the Public Acts of 1931 as amended being sections 750 72 750 73 750 75 and 750 80 of the Michigan Compiled Laws
- (d) Section 82 83 84 86 87 88 89 or 90 of Act No 328 of the Public Acts of 1931 as amended being sections 750 82 750 83 750 84 750 86 750 87 750 88 750 89 and 750 90 of the Michigan Compiled Laws or former section 85 of Act No 328 of the Public Acts of 1931
- (e) Section 91 or 92 of Act No 328 of the Public Acts of 1931 as amended being sections 750 91 and 750 92 of the Michigan Compiled Laws
- (f) Section 110 112 or 116 of Act No 328 of the Public Acts of 1931 as amended being sections 750 110 750 112 and 750 116 of the Michigan Compiled Laws
- (g) Section 135 136b(2) or 136b(3) of Act No 328 of the Public Acts of 1931 as amended being sections 750 135 and 750 136b of the Michigan Compiled Laws or former section 136a of Act No 328 of the Public Acts of 1931
- (h) Section 158 of Act No 328 of the Public Acts of 1931 as amended being section 750 158 of the Michigan Compiled Laws
- (i) Section 160 of Act No 328 of the Public Acts of 1931 as amended being section 750 160 of the Michigan Compiled Laws
- (j) Section 171 of Act No 328 of the Public Acts of 1931 as amended being section 750 171 of the Michigan Compiled Laws
- (k) Section 196 of Act No 328 of the Public Acts of 1931 as amended being section 750 196 of the Michigan Compiled Laws or former section 194 of Act No 328 of the Public Acts of 1931
- (l) Section 204 205 206 207 208 or 209 of Act No 328 of the Public Acts of 1931 as amended being sections 750 204 750 205 750 206 750 207 750 208 and 750 209 of the Michigan Compiled Laws
- (m) Section 213 of Act No 328 of the Public Acts of 1931 being section 750 213 of the Michigan Compiled Laws
- (n) Section 224 226 or 227 of Act No 328 of the Public Acts of 1931 as amended being sections 750 224 750 226 and 750 227 of the Michigan Compiled Laws
- (o) Section 316 317 319 321 322 323 327 328 or 329 of Act No 328 of the Public Acts of 1931 as amended being sections 750 316 750 317 750 319 750 321 750 322 750 323 750 327 750 328 and 750 329 of the Michigan Compiled Laws
- (p) Former section 333 of Act No 328 of the Public Acts of 1931
- (q) Section 338 338a or 338b of Act No 328 of the Public Acts of 1931 as amended being sections 750 338 750 338a and 750 338b of the Michigan Compiled Laws or former section 341 of Act No 328 of the Public Acts of 1931
- (r) Section 349 349a or 350 of Act No 328 of the Public Acts of 1931 as amended being sections 750 349 750 349a and 750 350 of the Michigan Compiled Laws
- (s) Section 357 of Act No 328 of the Public Acts of 1931 as amended being section 750 357 of the Michigan Compiled Laws
- (t) Section 386 or 392 of Act No 328 of the Public Acts of 1931 as amended being sections 750 386 and 750 392 of the Michigan Compiled Laws
- (u) Section 397 or 397a of Act No 328 of the Public Acts of 1931 as amended being sections 750 397 and 750 397a of the Michigan Compiled Laws
- (v) Section 436 of Act No 328 of the Public Acts of 1931 as amended being section 750 436 of the Michigan Compiled Laws
- (w) Section 511 or 517 of Act No 328 of the Public Acts of 1931 as amended being sections 750 511 and 750 517 of the Michigan Compiled Laws
- (x) Section 520b 520c 520d or 520g of Act No 328 of the Public Acts of 1931 as amended being sections 750 520b 750 520c 750 520d and 750 520g of the Michigan Compiled Laws
- (y) Section 529 529a 530 or 531 of Act No 328 of the Public Acts of 1931 as amended being sections 750 529 750 529a 750 530 and 750 531 of the Michigan Compiled Laws
- (z) Section 544 of Act No 328 of the Public Acts of 1931 as amended being section 750 544 of the Michigan Compiled Laws or former section 545a of Act No 328 of the Public Acts of 1931
- (aa) Former section 2 of Act No 38 of the Public Acts of the Extra Session of 1950
- (bb) Former section 6 of Act No 117 of the Public Acts of 1952
- (cc) Section 1 2 or 3 of Act No 302 of the Public Acts of 1968 as amended being sections 752 541 752 542 and 752 543 of the Michigan Compiled Laws

(dd) Section 7401(2)(a) or (b) or 7402(2)(a) or (b) of the public health code Act No 368 of the Public Acts of 1978 being sections 333 7401 and 333 7402 of the Michigan Compiled Laws

Sec 34a (1) A prisoner sentenced either before on or after the effective date of the amendatory act that added this section to an indeterminate term of imprisonment under the jurisdiction of the department shall be considered by the department for placement in a special alternative incarceration unit established under section 3 of the special alternative incarceration act Act No 287 of the Public Acts of 1988 being section 798 13 of the Michigan Compiled Laws if the prisoner meets the eligibility requirements of subsections (2) and (3) For a prisoner committed to the jurisdiction of the department on or after the effective date of the amendatory act that added this section the department shall determine before the prisoner leaves the reception center whether the prisoner is eligible for placement in a special alternative incarceration unit although actual placement may take place at a later date A determination of eligibility does not guarantee placement in a unit

(2) To be eligible for placement in a special alternative incarceration unit the prisoner shall meet all of the following requirements

(a) The prisoner's minimum sentence does not exceed either of the following limits as applicable

(i) 24 months or less for a violation of section 110 of the Michigan penal code Act No 110 of the Public Acts of 1931 being section 750 110 of the Michigan Compiled Laws if the violation involved any occupied dwelling house as that term is defined in that section

(ii) 36 months or less for any other crime

(b) The prisoner has never previously been placed in a special alternative incarceration unit as either a prisoner or a probationer unless he or she was removed from a special alternative incarceration unit for medical reasons as specified in subsection (6)

(c) The prisoner is physically able to participate in the program

(d) The prisoner does not appear to have any mental handicap that would prevent participation in the program

(e) The prisoner is serving his or her first prison sentence

(f) At the time of sentencing the judge did not prohibit participation in the program in the judgment of sentence

(g) The prisoner is otherwise suitable for the program as determined by the department

(h) The prisoner is not serving a sentence for any of the following crimes

(i) Section 11 49 80 83 89 91 157b 158 207 260 316 317 327 328 335a 338 338a 338b 349 349a 350 422 436 511 516 517 520b 529 529a 531 or 544 of the Michigan penal code Act No 328 of the Public Acts of 1931 being sections 750 11 750 49 750 80 750 83 750 89 750 91 750 157b 750 158 750 207 750 260 750 316 750 317 750 327 750 328 750 335a 750 338 750 338a 750 338b 750 349 750 349a 750 350 750 422 750 436 750 511 750 516 750 517 750 520b 750 529 750 529a 750 531 and 750 544 of the Michigan Compiled Laws

(ii) A violation of section 145c 520c 520d or 520g of Act No 328 of the Public Acts of 1931 being sections 750 145c 750 520c 750 520d and 750 520g of the Michigan Compiled Laws

(iii) A violation of section 72 73 or 75 of Act No 328 of the Public Acts of 1931 being sections 750 72 750 73 and 750 75 of the Michigan Compiled Laws

(iv) A violation of section 86 112 136b 193 195 213 319 321 329 or 397 of Act No 328 of the Public Acts of 1931 being sections 750 86 750 112 750 136b 750 193 750 195 750 213 750 319 750 321 750 329 and 750 397 of the Michigan Compiled Laws

(v) A violation of section 2 of Act No 302 of the Public Acts of 1968 being section 752 542 of the Michigan Compiled Laws

(vi) An attempt to commit a crime described in subparagraphs (i) to (v)

(vii) A violation occurring on or after January 1 1992 of section 625(4) or (5) of the Michigan vehicle code Act No 300 of the Public Acts of 1949 being section 257 625 of the Michigan Compiled Laws

(viii) A crime for which the prisoner was punished pursuant to section 10 11 or 12 of chapter IX of the code of criminal procedure Act No 175 of the Public Acts of 1927 being sections 769 10 769 11 and 769 12 of the Michigan Compiled Laws

(3) A prisoner who is serving a sentence for a violation of section 7401 or 7403 of the public health code Act No 368 of the Public Acts of 1978 being sections 333 7401 and 333 7403 of the Michigan Compiled Laws and who has previously been convicted for a violation of section 7401 or 7403(2)(a) (b) or (e) of Act No 368 of the Public Acts of 1978 being sections 333 7401 and 333 7403 of the Michigan Compiled Laws is not eligible for placement in a special alternative incarceration unit until after he or she has served the equivalent of the mandatory minimum sentence prescribed by statute for that violation

(4) If the sentencing judge prohibited a prisoner's participation in the special alternative incarceration program in the judgment of sentence that prisoner shall not be placed in a special alternative incarceration unit. If the sentencing judge permitted the prisoner's participation in the special alternative incarceration program in the judgment of sentence that prisoner may be placed in a special alternative incarceration unit if the department determines that the prisoner also meets the requirements of subsections (2) and (3). If the sentencing judge neither prohibited nor permitted a prisoner's participation in the special alternative incarceration program in the judgment of sentence and the department determines that the prisoner meets the eligibility requirements of subsections (2) and (3) the department shall notify the judge or the judge's successor, the prosecuting attorney for the county in which the prisoner was sentenced, and any victim of the crime for which the prisoner was committed if the victim has submitted to the department a written request for any notification pursuant to section 19(1) of the crime victim's rights act, Act No. 87 of the Public Acts of 1985, being section 780.769 of the Michigan Compiled Laws, of the proposed placement of the prisoner in the special alternative incarceration unit not later than 30 days before placement is intended to occur. The department shall not place the prisoner in a special alternative incarceration unit unless the sentencing judge or the judge's successor notifies the department in writing that he or she does not object to the proposed placement. In deciding whether to object, the judge or judge's successor shall review any impact statement submitted pursuant to section 14 of Act No. 87 of the Public Acts of 1985, being section 780.764 of the Michigan Compiled Laws, by the victim or victims of the crime of which the prisoner was convicted.

(5) Notwithstanding subsection (4), a prisoner shall not be placed in a special alternative incarceration unit unless the prisoner consents to that placement and agrees that the department may suspend or restrict privileges generally afforded other prisoners including, but not limited to, the areas of visitation, property, mail, publications, commissary, library, and telephone access. However, the department may not suspend or restrict the prisoner's access to the prisoner grievance system.

(6) A prisoner may be placed in a special alternative incarceration program for a period of not less than 90 days or more than 120 days. If during that period the prisoner misses more than 5 days of program participation due to medical excuse for illness or injury occurring after he or she was placed in the program, the period of placement shall be increased by the number of days missed, beginning with the sixth day of medical excuse, up to a maximum of 20 days. However, the total number of days a prisoner may be placed in this program, including days missed due to medical excuse, shall not exceed 120 days. A medical excuse shall be verified by a physician's statement. A prisoner who is medically unable to participate in the program for more than 25 days shall be returned to a state correctional facility but may be reassigned to the program if the prisoner meets the eligibility requirements of subsections (2) and (3).

(7) Upon certification of completion of the special alternative incarceration program, the prisoner shall be placed on parole. A prisoner paroled under this section shall have conditions of parole as determined appropriate by the parole board and shall be placed on parole for not less than 18 months or the balance of the prisoner's minimum sentence, whichever is greater, with at least the first 120 days under intensive supervision.

(8) The parole board may suspend or revoke parole for any prisoner paroled under this section subject to sections 39a and 40a. If parole is revoked before the expiration of the prisoner's minimum sentence, less disciplinary credits, the parole board shall forfeit all disciplinary credits granted pursuant to section 33(13) of Act No. 118 of the Public Acts of 1893, being section 800.33 of the Michigan Compiled Laws, that were accumulated during special alternative incarceration, and the prisoner shall be considered for parole pursuant to section 35.

(9) By March 19, 1993, and annually after that time, the department shall report to the legislature the impact of the operation of this section, including a report concerning recidivism.

(10) This section is repealed March 19, 1995.

Section 2 This amendatory act shall take effect October 1, 1994.

Section 3 This amendatory act shall not take effect unless Senate Bill No. 773 of the 87th Legislature is enacted into law.

This act is ordered to take immediate effect

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor