

Act No. 427
Public Acts of 1994
Approved by the Governor
January 5, 1995
Filed with the Secretary of State
January 6, 1995

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

Introduced by Senator Welborn

ENROLLED SENATE BILL No. 1122

AN ACT to amend section 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 as amended by Act No 217 of the Public Acts of 1994 being section 791 234a of the Michigan Compiled Laws

The People of the State of Michigan enact

Section 1 Section 34a of Act No 232 of the Public Acts of 1953 as amended by Act No 217 of the Public Acts of 1994 being section 791 234a of the Michigan Compiled Laws is amended to read as follows

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 March 19 1992 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) A violation of 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 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 making the decision on whether or not 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. For a prisoner other than a prisoner subject to disciplinary time, if parole is revoked before the expiration of the prisoner's minimum sentence less disciplinary credits, the parole board shall forfeit, pursuant to section 33(13) of Act No. 118 of the Public Acts of 1893, being section 800.33 of the Michigan Compiled Laws, all disciplinary credits that were accumulated during special alternative incarceration, and the prisoner shall be considered for parole pursuant to section 35.

(9) On 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) The provisions of this section regarding prisoners subject to disciplinary time take effect beginning on the effective date of Act No. 217 of the Public Acts of 1994, as prescribed in enacting section 2 of that amendatory act.

This act is ordered to take immediate effect.

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor