



HOUSE BILL No. 5387

March 1 1994 Introduced by Rep Profit and referred to the Committee on Judiciary

A bill to amend section 3b of chapter XI of Act No 175 of the Public Acts of 1927, entitled as amended

The code of criminal procedure
as amended by Act No 21 of the Public Acts of 1992 being section 771 3b of the Michigan Compiled Laws

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Section 3b of chapter XI of Act No 175 of the
2 Public Acts of 1927 as amended by Act No 21 of the Public Acts
3 of 1992, being section 771 3b of the Michigan Compiled Laws, is
4 amended to read as follows

5 CHAPTER XI

6 Sec 3b (1) In addition to any other terms or conditions
7 of probation provided for under this chapter, the court may
8 require under a probation order that a person convicted of a
9 crime except a crime specified in subsection ~~(+7)~~ (16), for

1 which a sentence in a state correctional facility may be imposed
2 shall satisfactorily complete a program of incarceration in a
3 special alternative incarceration unit, and a period of not less
4 than 120 days of probation under intensive supervision The spe-
5 cial alternative incarceration program shall be established and
6 operated by the department of corrections as provided in the spe-
7 cial alternative incarceration act, Act No 287 of the Public
8 Acts of 1988 being sections 798 11 to 798 18 of the Michigan
9 Compiled Laws The court also may require the person to satis-
10 factorily complete a local residential program of vocational
11 training, education and substance abuse treatment pursuant to
12 subsection (8) OR (9) ~~or (10)~~

13 (2) In order for a person to be placed in a special alterna-
14 tive incarceration program the person shall meet all of the fol-
15 lowing requirements

16 (a) The person is not more than 25 years of age at the time
17 of sentencing

18 (b) The person has never served a sentence of imprisonment
19 in a state correctional facility

20 (c) The person would likely be sentenced to imprisonment
21 ~~in a state correctional facility~~

22 ~~(d) The felony sentencing guidelines upper limit for the~~
23 ~~recommended minimum sentence for the person's offense is 12~~
24 ~~months or more, as determined by the department This subdivi-~~
25 ~~sion does not apply in either of the following circumstances~~

26 ~~(1) The person's offense is not covered by the felony~~
27 ~~sentencing guidelines~~

1 ~~(11) The reason for the person being considered for~~
 2 ~~placement is that he or she violated the conditions of his or her~~
 3 ~~probation—~~

4 (D) ~~(e)~~ The person is physically able to participate in
 5 the special alternative incarceration program

6 (E) ~~(f)~~ The person does not appear to have any mental
 7 handicap that would prevent participation in the special alterna-
 8 tive incarceration program

9 ~~(3) Subsection (2)(c) and (d) do not prevent the department~~
 10 ~~of corrections from entering into contracts with counties for~~
 11 ~~participation in the county jail special alternative carcera-~~
 12 ~~tion program— The county jail special alternative program is a~~
 13 ~~program in which convicted felons who would have been sentenced~~
 14 ~~to a county jail with a sentence of 6 to 12 months can~~
 15 ~~participate—~~

16 (3) ~~(4)~~ Before a court may place a person pursuant to this
 17 section an initial investigation shall be completed by the pro-
 18 bation officer The initial investigation shall establish that
 19 the person meets the requirements of subsection (2)(a) to (c)

20 (4) ~~(5)~~ After a person is placed in a special alternative
 21 incarceration program, the department shall establish that the
 22 person meets the requirements of subsection ~~(2)(a) to (f)~~ (2)
 23 If the person does not meet the requirements of subsection
 24 ~~(2)(a) to (f)~~ (2) the person shall be returned to the court
 25 for sentencing The placement of a person in a special alterna-
 26 tive incarceration program is conditioned upon the person meeting
 27 the requirements of subsection ~~(2)(a) to (f)~~ (2) If a person

1 does not meet the requirements of subsection ~~(2)(a) to (f)~~ (2),
2 the probation order is rescinded, and the person shall be sen-
3 tenced in the manner provided by law

4 (5) ~~(6)~~ A person shall not be placed in a program of spe-
5 cial alternative incarceration unless the person consents to the
6 placement

7 (6) ~~(7)~~ In every case in which a person is placed in a
8 special alternative incarceration program, the clerk of the sen-
9 tencing court shall within 5 working days after the placement,
10 mail to the department of corrections a certified copy of the
11 judgment of sentence and the presentence investigation report of
12 the person being placed

13 (7) ~~(8)~~ Except as provided in subsections ~~(9)~~ (8) to
14 ~~(12)~~ (11) a person shall be placed in a special alternative
15 incarceration program for a period of not more than 120 days
16 If during that period the person misses more than 5 days of
17 program participation due to medical excuse for illness or injury
18 occurring after he or she was placed in the program, the period
19 of placement shall be increased by the number of days missed
20 beginning with the sixth day of medical excuse, up to a maximum
21 of 20 days A medical excuse shall be verified by a physician s
22 statement, a copy of which shall be provided to the sentencing
23 court A person who is medically unable to participate in the
24 program for more than 25 days shall be returned to the court for
25 sentencing pursuant to subsection ~~(5)~~ (4)

26 (8) ~~(9)~~ The order of probation under subsection (1) may
27 require that a person who successfully completes a special

1 alternative incarceration program also successfully complete an
2 additional period of not more than 120 days of residential treat-
3 ment in the local governmental jurisdiction from which the person
4 was committed beginning immediately upon completion of the spe-
5 cial alternative incarceration program if the local unit of gov-
6 ernment has created a residential program providing vocational
7 training, education and substance abuse treatment designed in
8 whole or in part for persons who complete a program of special
9 alternative incarceration

10 (9) ~~-(10)-~~ The order of probation under subsection (1) may
11 authorize the department of corrections to require a person who
12 successfully completes a special alternative incarceration pro-
13 gram to also successfully complete an additional period of not
14 more than 120 days of residential treatment in a program operated
15 by the department of corrections pursuant to section 4(2) of the
16 special alternative incarceration act, Act No 287 of the Public
17 Acts of 1988, being section 798 14 of the Michigan Compiled
18 Laws A probationer sentenced pursuant to subsection ~~-(9)-~~ (8)
19 is not eligible for residential treatment pursuant to this
20 subsection

21 (10) ~~-(11)-~~ An order of probation under subsection (1) that
22 requires an additional period of residential treatment upon com-
23 pletion of the special alternative incarceration program shall be
24 considered to be entered pursuant to subsection ~~-(9)-~~ (8)

25 (11) ~~-(12)-~~ A person who successfully completes a program of
26 special alternative incarceration shall be placed on probation
27 under intensive supervision for a period of not less than 120

1 days The period of probation under intensive supervision shall
2 begin upon the completion of the program of special alternative
3 incarceration unless the person has been ordered to complete an
4 additional program of residential treatment as described in sub-
5 section (8) OR (9) ~~or (10)~~ in which case the period of proba-
6 tion under intensive supervision shall begin upon completion of
7 the program of residential treatment

8 (12) ~~(13)~~ Upon receiving a satisfactory report of per-
9 formance in the program from the department of corrections the
10 court shall authorize the release of the person from confinement
11 in the special alternative incarceration unit The receipt of an
12 unsatisfactory report shall be grounds for revocation of proba-
13 tion as would any other violation of a condition or term of
14 probation

15 (13) ~~(14)~~ A term of special alternative incarceration
16 shall be served in the manner provided in the special alternative
17 incarceration act Act No 287 of the Public Acts of 1988, being
18 sections 798 11 to 798 18 of the Michigan Compiled Laws

19 (14) ~~(15)~~ Except as provided in subsection ~~(16)~~ (15) a
20 person shall not be incarcerated in a special alternative incar-
21 ceration unit more than once

22 (15) ~~(16)~~ If a person was placed in a special alternative
23 incarceration program but was returned to the court for sentenc-
24 ing because of a medical condition existing at the time of the
25 placement the person may be placed again in a special alterna-
26 tive incarceration program after the medical condition is
27 corrected

1 (16) ~~-(17)-~~ A person who is convicted of any of the
2 following crimes shall not be eligible for placement in the spe-
3 cial alternative incarceration program

4 (a) Section 145c, 520b, 520c, 520d or 520g of the Michigan
5 penal code Act No 328 of the Public Acts of 1931, being sec-
6 tions 750 145c, 750 520b 750 520c, 750 520d, and 750 520g of the
7 Michigan Compiled Laws

8 (b) Section 72 73 or 75 of Act No 328 of the Public Acts
9 of 1931 being sections 750 72, 750 73, and 750 75 of the
10 Michigan Compiled Laws

11 (c) An attempt to commit a crime described in subdivision
12 (a) or (b)