



# HOUSE BILL No. 5517

April 27 1994 Introduced by Rep Bryant and referred to the Committee on Judiciary

A bill to amend sections 33b, 33b[1], 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, section 33b[1] as amended by Act No 143 of the Public Acts of 1988, and section 34a as added by Act No 22 of the Public Acts

of 1992, being sections 791 233b, 791 233b[1], and 791 234a of the Michigan Compiled Laws

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT**

1       Section 1     Sections 33b, 33b[1], and 34a of Act No 232 of  
2 the Public Acts of 1953, section 33b as amended by Act No 252 of  
3 the Public Acts of 1989, section 33b[1] as amended by Act No 143  
4 of the Public Acts of 1988, and section 34a as added by Act  
5 No 22 of the Public Acts of 1992, being sections 791 233b,  
6 791 233b[1], and 791 234a of the Michigan Compiled Laws, are  
7 amended to read as follows

8       Sec 33b     A person convicted and sentenced for the commis-  
9 sion of A CRIME THAT IS A VIOLATION OF any of the following  
10 ~~crimes shall~~ IS not ~~be~~ eligible for parole until the person  
11 has served the minimum term imposed by the court less an allow-  
12 ance for disciplinary credits as provided in section 33(5) of Act  
13 No 118 of the Public Acts of 1893, being section 800 33 of the  
14 Michigan Compiled Laws, ~~but shall~~ AND IS not ~~be~~ eligible for  
15 special parole

16       (a) Section 13 of THE MICHIGAN PENAL CODE, Act No 328 of  
17 the Public Acts of 1931, as amended, being section 750 13 of the  
18 Michigan Compiled Laws

19       (b) Section 14 of Act No 328 of the Public Acts of 1931, as  
20 amended, being section 750 14 of the Michigan Compiled Laws

21       (c) Section 72, 73, ~~or~~ 75, OR 80 of Act No 328 of the  
22 Public Acts of 1931, as amended, being ~~section~~ SECTIONS 750 72,  
23 750 73, ~~or~~ 750 75, AND 750 80 of the Michigan Compiled Laws

1 (d) Section ~~80,~~ 82, 83, 84, ~~85,~~ 86, 87, 88, 89, or 90 of  
2 Act No 328 of the Public Acts of 1931, as amended, being  
3 ~~section 750 80,~~ SECTIONS 750 82, 750 83, 750 84, ~~750 85,~~  
4 750 86, 750 87, 750 88, 750 89, ~~or~~ AND 750 90 of the Michigan  
5 Compiled Laws, OR FORMER SECTION 85 OF ACT NO 328 OF THE PUBLIC  
6 ACTS OF 1931

7 (e) Section 91 or 92 of Act No 328 of the Public Acts of  
8 1931, as amended, being ~~section~~ SECTIONS 750 91 ~~or~~ AND 750 92  
9 of the Michigan Compiled Laws

10 (f) Section 110, 112, or 116 of Act No 328 of the Public  
11 Acts of 1931, as amended, being ~~section~~ SECTIONS 750 110,  
12 750 112, ~~or~~ AND 750 116 of the Michigan Compiled Laws

13 (g) Section 135, 136b(2), or 136b(3) of Act No 328 of the  
14 Public Acts of 1931, as amended, being ~~section~~ SECTIONS 750 135  
15 ~~or~~ AND 750 136b of the Michigan Compiled Laws, or ~~under~~  
16 former section 136a of Act No 328 of the Public Acts of 1931

17 (h) Section 158 of Act No 328 of the Public Acts of 1931,  
18 as amended, being section 750 158 of the Michigan Compiled Laws

19 (i) Section 160 of Act No 328 of the Public Acts of 1931  
20 as amended, being section 750 160 of the Michigan Compiled Laws

21 (j) Section 171 of Act No 328 of the Public Acts of 1931,  
22 as amended, being section 750 171 of the Michigan Compiled Laws

23 (k) Section ~~194 or~~ 196 of Act No 328 of the Public Acts  
24 of 1931, as amended, being section ~~750 194 or~~ 750 196 of the  
25 Michigan Compiled Laws, OR FORMER SECTION 194 OF ACT NO 328 OF  
26 THE PUBLIC ACTS OF 1931

1 (L) Section 204, 205, 206, 207, 208, OR 209 ~~, or 213~~ of  
 2 Act No 328 of the Public Acts of 1931, as amended, being  
 3 ~~section~~ SECTIONS 750 204, 750 205, 750 206, 750 207, 750 208,  
 4 AND 750 209 ~~, or 750 213~~ of the Michigan Compiled Laws

5 (M) SECTION 213 OF ACT NO 328 OF THE PUBLIC ACTS OF 1931,  
 6 BEING SECTION 750 213 OF THE MICHIGAN COMPILED LAWS

7 (N) ~~(m)~~ Section 224, 226, or 227 of Act No 328 of the  
 8 Public Acts of 1931, as amended, being ~~section~~ SECTIONS  
 9 750 224, 750 226, ~~or~~ AND 750 227 of the Michigan Compiled  
 10 Laws

11 (O) ~~(n)~~ Section 316, 317, 319, 321, 322, 323, 327, 328, or  
 12 329 of Act No 328 of the Public Acts of 1931, as amended, being  
 13 ~~section~~ SECTIONS 750 316, 750 317, 750 319, 750 321, 750 322,  
 14 750 323, 750 327, 750 328, ~~or~~ AND 750 329 of the Michigan  
 15 Compiled Laws

16 (P) ~~(o)~~ ~~Section~~ FORMER SECTION 333 of Act No 328 of the  
 17 Public Acts of 1931 ~~, as amended, being section 750 333 of the~~  
 18 ~~Michigan Compiled Laws~~

19 (Q) ~~(p)~~ Section 338, 338a, OR 338b ~~, or 341~~ of Act  
 20 No 328 of the Public Acts of 1931, as amended, being ~~section~~  
 21 SECTIONS 750 338, 750 338a, AND 750 338b ~~, or 750 341~~ of the  
 22 Michigan Compiled Laws, OR FORMER SECTION 341 OF ACT NO 328 OF  
 23 THE PUBLIC ACTS OF 1931

24 (R) ~~(q)~~ Section 349, 349a, or 350 of Act No 328 of the  
 25 Public Acts of 1931, as amended, being ~~section~~ SECTIONS  
 26 750 349, 750 349a, ~~or~~ AND 750 350 of the Michigan Compiled  
 27 Laws

1 (S) ~~(r)~~ Section 357 of Act No 328 of the Public Acts of  
2 1931, as amended, being section 750 357 of the Michigan Compiled  
3 Laws

4 (T) ~~(s)~~ Section 386 or 392 of Act No 328 of the Public  
5 Acts of 1931, as amended, being ~~section~~ SECTIONS 750 386 ~~or~~  
6 AND 750 392 of the Michigan Compiled Laws

7 (U) ~~(t)~~ Section 397 or 397a of Act No 328 of the Public  
8 Acts of 1931, as amended, being ~~section~~ SECTIONS 750 397 ~~or~~  
9 AND 750 397a of the Michigan Compiled Laws

10 (V) ~~(u)~~ Section 436 of Act No 328 of the Public Acts of  
11 1931, as amended, being section 750 436 of the Michigan Compiled  
12 Laws

13 (W) ~~(v)~~ Section 511 or 517 of Act No 328 of the Public  
14 Acts of 1931, as amended, being ~~section~~ SECTIONS 750 511 ~~or~~  
15 AND 750 517 of the Michigan Compiled Laws

16 (X) ~~(w)~~ Section 520b, 520c, 520d, or 520g of Act No 328  
17 of the Public Acts of 1931, as amended, being ~~section~~ SECTIONS  
18 750 520b, 750 520c, 750 520d, ~~or~~ AND 750 520g of the Michigan  
19 Compiled Laws

20 (Y) ~~(x)~~ Section 529, 530, or 531 of Act No 328 of the  
21 Public Acts of 1931, as amended, being ~~section~~ SECTIONS  
22 750 529, 750 530, ~~or~~ AND 750 531 of the Michigan Compiled  
23 Laws

24 (Z) ~~(y)~~ Section 544 ~~or 545a~~ of Act No 328 of the Public  
25 Acts of 1931, as amended, being section 750 544 ~~or 750 545a~~ of  
26 the Michigan Compiled Laws, OR FORMER SECTION 545A OF ACT NO 328  
27 OF THE PUBLIC ACTS OF 1931

1 (AA) ~~(z) Section~~ FORMER SECTION 2 of Act No 38 of the  
 2 Public Acts of THE EXTRA SESSION OF 1950 ~~Ex Sess, as amended,~~  
 3 ~~being section 752 312 of the Michigan Compiled Laws~~

4 (BB) ~~(aa) Section~~ FORMER SECTION 6 of Act No 117 of the  
 5 Public Acts of 1952 ~~, as amended, being section 752 326 of the~~  
 6 ~~Michigan Compiled Laws~~

7 (CC) ~~(bb) Section~~ 1, 2, OR 3 ~~, or 4~~ of Act No 302 of  
 8 the Public Acts of 1968, as amended, being ~~section~~ SECTIONS  
 9 752 541, 752 542, AND 752 543 ~~, or 752 544~~ of the Michigan  
 10 Compiled Laws

11 (DD) ~~(cc) Section~~ ~~7401(2)(a), 7401(2)(b), 7402(2)(a)~~ ~~,~~  
 12 or ~~7402(2)(b)~~ (B) of THE PUBLIC HEALTH CODE, Act No 368 of the  
 13 Public Acts of 1978, being section ~~333 7401 or~~ 333 7402 of the  
 14 Michigan Compiled Laws, OR FORMER SECTION 7401(2)(A) OR (B) OF  
 15 ACT NO 368 OF THE PUBLIC ACTS OF 1978

16 Sec 33b[1] As used in section 34, "major controlled sub-  
 17 stance offense" means ~~any of the following~~ ~~(a) A violation of~~  
 18 ~~section 7401(2)(a)(i) or (ii) of the public health code, Act~~  
 19 ~~No 368 of the Public Acts of 1978, being section 333 7401 of the~~  
 20 ~~Michigan Compiled Laws~~ ~~(b) A~~ A violation of  
 21 section 7403(2)(a)(i) or (ii) of THE PUBLIC HEALTH CODE, Act  
 22 No 368 of the Public Acts of 1978, being section 333 7403 of the  
 23 Michigan Compiled Laws, ~~—(c) Conspiracy~~ OR CONSPIRACY to  
 24 commit ~~an offense listed in subdivision (a) or (b)~~ A VIOLATION  
 25 OF SECTION 7403(2)(A)(i) OR (ii) OF ACT NO 368 OF THE PUBLIC  
 26 ACTS OF 1978

1       Sec 34a   (1) A prisoner sentenced either before, on, or  
2 after the effective date of the amendatory act that added this  
3 section to an indeterminate term of imprisonment under the juris-  
4 diction of the department shall be considered by the department  
5 for placement in a special alternative incarceration unit estab-  
6 lished under section 3 of the special alternative incarceration  
7 act, Act No 287 of the Public Acts of 1988, being section 798 13  
8 of the Michigan Compiled Laws, if the prisoner meets the eligi-  
9 bility requirements of subsections (2) and (3) For a prisoner  
10 committed to the jurisdiction of the department on or after the  
11 effective date of the amendatory act that added this section, the  
12 department shall determine before the prisoner leaves the recep-  
13 tion center whether the prisoner is eligible for placement in a  
14 special alternative incarceration unit, although actual placement  
15 may take place at a later date A determination of eligibility  
16 does not guarantee placement in a unit

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

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

22       (1) 24 months or less for a violation of section 110 of the  
23 Michigan penal code, Act No 110 of the Public Acts of 1931,  
24 being section 750 110 of the Michigan Compiled Laws, if the vio-  
25 lation involved any occupied dwelling house, as that term is  
26 defined in that section

1       (11) 36 months or less for any other crime

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

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

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

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

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

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

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

19       (1) Section 11, 49, 80, 83, 89, 91, 157b, 158, 207, 260,  
20 316, 317, 327, 328, 335a, 338, 338a, 338b, 349, 349a, 350, 422,  
21 436, 511, 516, 517, 520b, 529, 531, or 544 of the Michigan penal  
22 code, Act No 328 of the Public Acts of 1931, being  
23 sections 750 11, 750 49, 750 80, 750 83, 750 89, 750 91,  
24 750 157b, 750 158, 750 207, 750 260, 750 316, 750 317, 750 327,  
25 750 328, 750 335a, 750 338, 750 338a, 750 338b, 750 349,  
26 750 349a, 750 350, 750 422, 750 436, 750 511, 750 516, 750 517,



1 750 520b, 750 529, 750 531, and 750 544 of the Michigan Compiled  
2 Laws

3 (ii) A violation of section 145c, 520c, 520d, or 520g of Act  
4 No 328 of the Public Acts of 1931, being sections 750 145c,  
5 750 520c, 750 520d, and 750 520g of the Michigan Compiled Laws

6 (iii) A violation of section 72, 73, or 75 of Act No 328 of  
7 the Public Acts of 1931, being sections 750 72, 750 73, and  
8 750 75 of the Michigan Compiled Laws

9 (iv) A violation of section 86, 112, 136b, 193, 195, 213,  
10 319, 321, 329, or 397 of Act No 328 of the Public Acts of 1931,  
11 being sections 750 86, 750 112, 750 136b, 750 193, 750 195,  
12 750 213, 750 319, 750 321, 750 329, and 750 397 of the Michigan  
13 Compiled Laws

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

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

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

23 (viii) A crime for which the prisoner was punished pursuant  
24 to section 10, 11, or 12 of chapter IX of the code of criminal  
25 procedure, Act No 175 of the Public Acts of 1927, being sections  
26 769 10, 769 11, and 769 12 of the Michigan Compiled Laws

1 (3) A prisoner who is serving a sentence for a violation of  
2 section ~~7401 or~~ 7403 of the public health code, Act No 368 of  
3 the Public Acts of 1978, being ~~sections 333 7401 and~~ SECTION  
4 333 7403 of the Michigan Compiled Laws, OR FORMER SECTION 7401 OF  
5 ACT NO 368 OF THE PUBLIC ACTS OF 1978 and who has previously  
6 been convicted for a violation of FORMER section 7401 or SECTION  
7 7403(2)(a), (b), or (e) of Act No 368 of the Public Acts of 1978  
8 ~~, being sections 333 7401 and 333 7403 of the Michigan Compiled~~  
9 ~~Laws,~~ is not eligible for placement in a special alternative  
10 incarceration unit until after he or she has served the equiva-  
11 lent of the mandatory minimum sentence prescribed by statute for  
12 that violation

13 (4) If the sentencing judge prohibited a prisoner's partici-  
14 pation in the special alternative incarceration program in the  
15 judgment of sentence, that prisoner shall not be placed in a spe-  
16 cial alternative incarceration unit If the sentencing judge  
17 permitted the prisoner's participation in the special alternative  
18 incarceration program in the judgment of sentence, that prisoner  
19 may be placed in a special alternative incarceration unit if the  
20 department determines that the prisoner also meets the require-  
21 ments of subsections (2) and (3) If the sentencing judge nei-  
22 ther prohibited nor permitted a prisoner's participation in the  
23 special alternative incarceration program in the judgment of sen-  
24 tence, and the department determines that the prisoner meets the  
25 eligibility requirements of subsections (2) and (3), the depart-  
26 ment shall notify the judge or the judge's successor, the  
27 prosecuting attorney for the county in which the prisoner was

1 sentenced, and any victim of the crime for which the prisoner was  
2 committed if the victim has submitted to the department a written  
3 request for any notification pursuant to section 19(1) of the  
4 crime victim's rights act, Act No 87 of the Public Acts of 1985,  
5 being section 780 769 of the Michigan Compiled Laws, of the pro-  
6 posed placement of the prisoner in the special alternative incar-  
7 ceration unit not later than 30 days before placement is intended  
8 to occur The department shall not place the prisoner in a spe-  
9 cial alternative incarceration unit unless the sentencing judge,  
10 or the judge's successor, notifies the department, in writing,  
11 that he or she does not object to the proposed placement In  
12 making the decision on whether or not to object, the judge, or  
13 judge's successor, shall review any impact statement submitted  
14 pursuant to section 14 of Act No 87 of the Public Acts of 1985,  
15 being section 780 764 of the Michigan Compiled Laws, by the  
16 victim or victims of the crime of which the prisoner was  
17 convicted

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

26 (6) A prisoner may be placed in a special alternative  
27 incarceration program for a period of not less than 90 days or

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

14 (7) Upon certification of completion of the special alterna-  
15 tive incarceration program, the prisoner shall be placed on  
16 parole A prisoner paroled under this section shall have condi-  
17 tions of parole as determined appropriate by the parole board and  
18 shall be placed on parole for not less than 18 months, or the  
19 balance of the prisoner's minimum sentence, whichever is greater,  
20 with at least the first 120 days under intensive supervision

21 (8) The parole board may suspend or revoke parole for any  
22 prisoner paroled under this section subject to sections 39a and  
23 40a If parole is revoked before the expiration of the  
24 prisoner's minimum sentence, less disciplinary credits, the  
25 parole board shall forfeit all disciplinary credits granted pur-  
26 suant to section 33(13) of Act No 118 of the Public Acts of  
27 1893, being section 800 33 of the Michigan Compiled Laws, that

1 were accumulated during special alternative incarceration, and  
2 the prisoner shall be considered for parole pursuant to  
3 section 35

4 (9) One year after the effective date of the 1992 amendatory  
5 act that added this section and annually after that time, the  
6 department shall report to the legislature the impact of the  
7 operation of this section, including a report concerning  
8 recidivism

9 (10) This section is repealed upon the expiration of 3 years  
10 after the date of its enactment

11 Section 2 This amendatory act shall not take effect unless  
12 Senate Bill No \_\_\_\_\_ or House Bill No 5511 (request  
13 no 04358'93) of the 87th Legislature is enacted into law