



SENATE BILL No. 781

July 21, 1993, Introduced by Senators KELLY, MILLER, KOIVISTO, HART, FAUST, BOUCHARD and GEAKE and referred to the Committee on Judiciary.

A bill 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 as herein defined, to pardons, reprieves, commutations, and paroles, to the administration of penal institutions, correctional farms, and probation recovery camps, to prison labor and prison industries, and 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 hereby transferred; 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; 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:

1 Section 1. Sections 33b and 34a of Act No. 232 of the
2 Public Acts of 1953, section 33b as amended by Act No. 252 of the
3 Public Acts of 1989 and section 34a as added by Act No. 22 of the
4 Public Acts of 1992, being sections 791.233b and 791.234a of the
5 Michigan Compiled Laws, are amended to read as follows:

6 Sec. 33b. A person convicted and sentenced for the commis-
7 sion of A CRIME THAT IS A VIOLATION OF any of the following
8 ~~crimes shall~~ IS not ~~be~~ eligible for parole until the person
9 has served the minimum term imposed by the court less an allow-
10 ance for disciplinary credits as provided in section 33(5) of Act
11 No. 118 of the Public Acts of 1893, being section 800.33 of the
12 Michigan Compiled Laws, ~~but shall~~ AND IS not ~~be~~ eligible for
13 special parole:

14 (a) Section 13 of THE MICHIGAN PENAL CODE, Act No. 328 of
15 the Public Acts of 1931, as amended, being section 750.13 of the
16 Michigan Compiled Laws.

17 (b) Section 14 of Act No. 328 of the Public Acts of 1931, as
18 amended, being section 750.14 of the Michigan Compiled Laws.

19 (c) Section 72, 73, ~~or~~ 75, OR 80 of Act No. 328 of the
20 Public Acts of 1931, as amended, being ~~section~~ SECTIONS 750.72,
21 750.73, ~~or~~ 750.75, AND 750.80 of the Michigan Compiled Laws.

22 (d) Section ~~80,~~ 82, 83, 84, ~~85,~~ 86, 87, 88, 89, or 90 of
23 Act No. 328 of the Public Acts of 1931, as amended, being
24 ~~section 750.80,~~ SECTIONS 750.82, 750.83, 750.84, ~~750.85,~~

1 750.86, 750.87, 750.88, 750.89, ~~or~~ AND 750.90 of the Michigan
2 Compiled Laws, OR FORMER SECTION 85 OF ACT NO. 328 OF THE PUBLIC
3 ACTS OF 1931.

4 (e) Section 91 or 92 of Act No. 328 of the Public Acts of
5 1931, as amended, being ~~section~~ SECTIONS 750.91 ~~or~~ AND 750.92
6 of the Michigan Compiled Laws.

7 (f) Section 110, 112, or 116 of Act No. 328 of the Public
8 Acts of 1931, as amended, being ~~section~~ SECTIONS 750.110,
9 750.112, ~~or~~ AND 750.116 of the Michigan Compiled Laws.

10 (g) Section 135, 136b(2), or 136b(3) of Act No. 328 of the
11 Public Acts of 1931, as amended, being ~~section~~ SECTIONS 750.135
12 ~~or~~ AND 750.136b of the Michigan Compiled Laws, or ~~under~~
13 former section 136a of Act No. 328 of the Public Acts of 1931.

14 (h) Section 158 of Act No. 328 of the Public Acts of 1931,
15 as amended, being section 750.158 of the Michigan Compiled Laws.

16 (i) Section 160 of Act No. 328 of the Public Acts of 1931,
17 as amended, being section 750.160 of the Michigan Compiled Laws.

18 (j) Section 171 of Act No. 328 of the Public Acts of 1931,
19 as amended, being section 750.171 of the Michigan Compiled Laws.

20 (k) Section ~~194 or~~ 196 of Act No. 328 of the Public Acts
21 of 1931, as amended, being section ~~750.194 or~~ 750.196 of the
22 Michigan Compiled Laws, OR FORMER SECTION 194 OF ACT NO. 328 OF
23 THE PUBLIC ACTS OF 1931.

24 (l) Section 204, 205, 206, 207, 208, OR 209 ~~, or 213~~ of
25 Act No. 328 of the Public Acts of 1931, as amended, being
26 ~~section~~ SECTIONS 750.204, 750.205, 750.206, 750.207, 750.208,
27 AND 750.209 ~~, or 750.213~~ of the Michigan Compiled Laws.

1 (M) SECTION 213 OF ACT NO. 328 OF THE PUBLIC ACTS OF 1931,
2 BEING SECTION 750.213 OF THE MICHIGAN COMPILED LAWS.

3 (N) ~~(m)~~ Section 224, 226, or 227 of Act No. 328 of the
4 Public Acts of 1931, as amended, being ~~section~~ SECTIONS
5 750.224, 750.226, ~~or~~ AND 750.227 of the Michigan Compiled
6 Laws.

7 (O) ~~(n)~~ Section 316, 317, 319, 321, 322, 323, 327, 328, or
8 329 of Act No. 328 of the Public Acts of 1931, as amended, being
9 ~~section~~ SECTIONS 750.316, 750.317, 750.319, 750.321, 750.322,
10 750.323, 750.327, 750.328, ~~or~~ AND 750.329 of the Michigan
11 Compiled Laws.

12 (P) ~~(o)~~ ~~Section~~ FORMER SECTION 333 of Act No. 328 of the
13 Public Acts of 1931. ~~, as amended, being section 750.333 of the~~
14 ~~Michigan Compiled Laws.~~

15 (Q) ~~(p)~~ Section 338, 338a, OR 338b ~~, or 341~~ of Act
16 No. 328 of the Public Acts of 1931, as amended, being ~~section~~
17 SECTIONS 750.338, 750.338a, AND 750.338b ~~, or 750.341~~ of the
18 Michigan Compiled Laws, OR FORMER SECTION 341 OF ACT NO. 328 OF
19 THE PUBLIC ACTS OF 1931.

20 (R) ~~(q)~~ Section 349, 349a, or 350 of Act No. 328 of the
21 Public Acts of 1931, as amended, being ~~section~~ SECTIONS
22 750.349, 750.349a, ~~or~~ AND 750.350 of the Michigan Compiled
23 Laws.

24 (S) ~~(r)~~ Section 357 of Act No. 328 of the Public Acts of
25 1931, as amended, being section 750.357 of the Michigan Compiled
26 Laws.

1 (T) ~~-(s)-~~ Section 386 or 392 of Act No. 328 of the Public
2 Acts of 1931, as amended, being ~~-section-~~ SECTIONS 750.386 ~~-or-~~
3 AND 750.392 of the Michigan Compiled Laws.

4 (U) ~~-(t)-~~ Section 397 or 397a of Act No. 328 of the Public
5 Acts of 1931, as amended, being ~~-section-~~ SECTIONS 750.397 ~~-or-~~
6 AND 750.397a of the Michigan Compiled Laws.

7 (V) ~~-(u)-~~ Section 436 of Act No. 328 of the Public Acts of
8 1931, as amended, being section 750.436 of the Michigan Compiled
9 Laws.

10 (W) ~~-(v)-~~ Section 511 or 517 of Act No. 328 of the Public
11 Acts of 1931, as amended, being ~~-section-~~ SECTIONS 750.511 ~~-or-~~
12 AND 750.517 of the Michigan Compiled Laws.

13 (X) ~~-(w)-~~ Section 520b, 520c, 520d, or 520g of Act No. 328
14 of the Public Acts of 1931, as amended, being ~~-section-~~ SECTIONS
15 750.520b, 750.520c, 750.520d, ~~-or-~~ AND 750.520g of the Michigan
16 Compiled Laws.

17 (Y) ~~-(x)-~~ Section 529, 529A, 530, or 531 of Act No. 328 of
18 the Public Acts of 1931, as amended, being ~~-section-~~ SECTIONS
19 750.529, 750.530, ~~-or-~~ AND 750.531 of the Michigan Compiled
20 Laws.

21 (Z) ~~-(y)-~~ Section 544 ~~-or-545a-~~ of Act No. 328 of the Public
22 Acts of 1931, as amended, being section 750.544 ~~-or-750.545a-~~ of
23 the Michigan Compiled Laws, OR FORMER SECTION 545A OF ACT NO. 328
24 OF THE PUBLIC ACTS OF 1931.

25 (AA) ~~-(z)-Section-~~ FORMER SECTION 2 of Act No. 38 of the
26 Public Acts of THE EXTRA SESSION OF 1950. ~~-Ex. Sess., as amended,~~
27 ~~being section 752.312 of the Michigan Compiled Laws.~~

1 (BB) ~~(aa) Section~~ FORMER SECTION 6 of Act No. 117 of the
 2 Public Acts of 1952. ~~, as amended, being section 752.326 of the~~
 3 ~~Michigan Compiled Laws.~~

4 (CC) ~~(bb)~~ Section 1, 2, OR 3 ~~, or 4~~ of Act No. 302 of
 5 the Public Acts of 1968, as amended, being ~~section~~ SECTIONS
 6 752.541, 752.542, AND 752.543 ~~, or 752.544~~ of the Michigan
 7 Compiled Laws.

8 (DD) ~~(ee)~~ Section 7401(2)(a) ~~, 7401(2)(b),~~ OR (B) OR
 9 7402(2)(a) ~~, or 7402(2)(b)~~ (B) of THE PUBLIC HEALTH CODE, Act
 10 No. 368 of the Public Acts of 1978, being ~~section~~ SECTIONS
 11 333.7401 ~~or~~ AND 333.7402 of the Michigan Compiled Laws.

12 Sec. 34a. (1) A prisoner sentenced either before, on, or
 13 after the effective date of the amendatory act that added this
 14 section to an indeterminate term of imprisonment under the juris-
 15 diction of the department shall be considered by the department
 16 for placement in a special alternative incarceration unit estab-
 17 lished under section 3 of the special alternative incarceration
 18 act, Act No. 287 of the Public Acts of 1988, being section 798.13
 19 of the Michigan Compiled Laws, if the prisoner meets the eligi-
 20 bility requirements of subsections (2) and (3). For a prisoner
 21 committed to the jurisdiction of the department on or after the
 22 effective date of the amendatory act that added this section, the
 23 department shall determine before the prisoner leaves the recep-
 24 tion center whether the prisoner is eligible for placement in a
 25 special alternative incarceration unit, although actual placement
 26 may take place at a later date. A determination of eligibility
 27 does not guarantee placement in a unit.

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

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

6 (i) 24 months or less for a violation of section 110 of the
7 Michigan penal code, Act No. 110 of the Public Acts of 1931,
8 being section 750.110 of the Michigan Compiled Laws, if the vio-
9 lation involved any occupied dwelling house — as that term is
10 defined in that section.

11 (ii) 36 months or less for any other crime.

12 (b) The prisoner has never previously been placed in a spe-
13 cial alternative incarceration unit as either a prisoner or a
14 probationer, unless he or she was removed from a special alterna-
15 tive incarceration unit for medical reasons as specified in
16 subsection (6).

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

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

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

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

25 (g) The prisoner is otherwise suitable for the program, as
26 determined by the department.

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

3 (i) Section 11, 49, 80, 83, 89, 91, 157b, 158, 207, 260,
4 316, 317, 327, 328, 335a, 338, 338a, 338b, 349, 349a, 350, 422,
5 436, 511, 516, 517, 520b, 529, 529A, 531, or 544 of the Michigan
6 penal code, Act No. 328 of the Public Acts of 1931, being
7 sections 750.11, 750.49, 750.80, 750.83, 750.89, 750.91,
8 750.157b, 750.158, 750.207, 750.260, 750.316, 750.317, 750.327,
9 750.328, 750.335a, 750.338, 750.338a, 750.338b, 750.349,
10 750.349a, 750.350, 750.422, 750.436, 750.511, 750.516, 750.517,
11 750.520b, 750.529, 750.529A, 750.531, and 750.544 of the Michigan
12 Compiled Laws.

13 (ii) A violation of section 145c, 520c, 520d, or 520g of Act
14 No. 328 of the Public Acts of 1931, being sections 750.145c,
15 750.520c, 750.520d, and 750.520g of the Michigan Compiled Laws.

16 (iii) A violation of section 72, 73, or 75 of Act No. 328 of
17 the Public Acts of 1931, being sections 750.72, 750.73, and
18 750.75 of the Michigan Compiled Laws.

19 (iv) A violation of section 86, 112, 136b, 193, 195, 213,
20 319, 321, 329, or 397 of Act No. 328 of the Public Acts of 1931,
21 being sections 750.86, 750.112, 750.136b, 750.193, 750.195,
22 750.213, 750.319, 750.321, 750.329, and 750.397 of the Michigan
23 Compiled Laws.

24 (v) A violation of section 2 of Act No. 302 of the Public
25 Acts of 1968, being section 752.542 of the Michigan Compiled
26 Laws.

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

3 (vii) A violation occurring on or after January 1, 1992, of
4 section 625(4) or (5) of the Michigan vehicle code, Act No. 300
5 of the Public Acts of 1949, being section 257.625 of the Michigan
6 Compiled Laws.

7 (viii) A crime for which the prisoner was punished pursuant
8 to section 10, 11, or 12 of chapter IX of the code of criminal
9 procedure, Act No. 175 of the Public Acts of 1927, being sections
10 769.10, 769.11, and 769.12 of the Michigan Compiled Laws.

11 (3) A prisoner who is serving a sentence for a violation of
12 section 7401 or 7403 of the public health code, Act No. 368 of
13 the Public Acts of 1978, being sections 333.7401 and 333.7403 of
14 the Michigan Compiled Laws, and who has previously been convicted
15 for a violation of section 7401 or 7403(2)(a), (b), or (e) of Act
16 No. 368 of the Public Acts of 1978, being sections 333.7401 and
17 333.7403 of the Michigan Compiled Laws, is not eligible for
18 placement in a special alternative incarceration unit until after
19 he or she has served the equivalent of the mandatory minimum sen-
20 tence prescribed by statute for that violation.

21 (4) If the sentencing judge prohibited a prisoner's partici-
22 pation in the special alternative incarceration program in the
23 judgment of sentence, that prisoner shall not be placed in a spe-
24 cial alternative incarceration unit. If the sentencing judge
25 permitted the prisoner's participation in the special alternative
26 incarceration program in the judgment of sentence, that prisoner
27 may be placed in a special alternative incarceration unit if the

1 department determines that the prisoner also meets the
2 requirements of subsections (2) and (3). If the sentencing judge
3 neither prohibited nor permitted a prisoner's participation in
4 the special alternative incarceration program in the judgment of
5 sentence, and the department determines that the prisoner meets
6 the eligibility requirements of subsections (2) and (3), the
7 department shall notify the judge or the judge's successor, the
8 prosecuting attorney for the county in which the prisoner was
9 sentenced, and any victim of the crime for which the prisoner was
10 committed if the victim has submitted to the department a written
11 request for any notification pursuant to section 19(1) of the
12 crime victim's rights act, Act No. 87 of the Public Acts of 1985,
13 being section 780.769 of the Michigan Compiled Laws, of the pro-
14 posed placement of the prisoner in the special alternative incar-
15 ceration unit not later than 30 days before placement is intended
16 to occur. The department shall not place the prisoner in a spe-
17 cial alternative incarceration unit unless the sentencing judge
18 ~~—~~ or the judge's successor ~~—~~ notifies the department ~~—~~ in
19 writing ~~—~~ that he or she does not object to the proposed
20 placement. In ~~making the decision on~~ DECIDING whether ~~or not~~
21 to object, the judge ~~—~~ or judge's successor ~~—~~ shall review
22 any impact statement submitted pursuant to section 14 of Act
23 No. 87 of the Public Acts of 1985, being section 780.764 of the
24 Michigan Compiled Laws, by the victim or victims of the crime of
25 which the prisoner was convicted.

26 (5) Notwithstanding subsection (4), a prisoner shall not be
27 placed in a special alternative incarceration unit unless the

1 prisoner consents to that placement and agrees that the
2 department may suspend or restrict privileges generally afforded
3 other prisoners including, but not limited to, the areas of visi-
4 tation, property, mail, publications, commissary, library, and
5 telephone access. However, the department may not suspend or
6 restrict the prisoner's access to the prisoner grievance system.

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

22 (7) Upon certification of completion of the special alterna-
23 tive incarceration program, the prisoner shall be placed on
24 parole. A prisoner paroled under this section shall have condi-
25 tions of parole as determined appropriate by the parole board and
26 shall be placed on parole for not less than 18 months — or the

1 balance of the prisoner's minimum sentence, whichever is greater,
2 with at least the first 120 days under intensive supervision.

3 (8) The parole board may suspend or revoke parole for any
4 prisoner paroled under this section subject to sections 39a and
5 40a. If parole is revoked before the expiration of the
6 prisoner's minimum sentence, less disciplinary credits, the
7 parole board shall forfeit all disciplinary credits granted pur-
8 suant to section 33(13) of Act No. 118 of the Public Acts of
9 1893, being section 800.33 of the Michigan Compiled Laws, that
10 were accumulated during special alternative incarceration, and
11 the prisoner shall be considered for parole pursuant to
12 section 35.

13 (9) ~~One year after the effective date of the 1992 amenda-~~
14 ~~tory act that added this section~~ BY MARCH 19, 1993 and annually
15 after that time, the department shall report to the legislature
16 the impact of the operation of this section, including a report
17 concerning recidivism.

18 (10) This section is repealed ~~upon the expiration of 3~~
19 ~~years after the date of its enactment~~ MARCH 19, 1995.

20 Section 2. This amendatory act shall not take effect unless
21 Senate Bill No. 773

22 of the 87th Legislature is enacted into law.