



# HOUSE BILL No. 4252

February 1, 1995, Introduced by Reps. Profit, Wallace, Cropsey, Lowe, Law, Yokich, Schroer, Pitoniak, Hanley and Galloway and referred to the Committee on Judiciary and Civil Rights.

A bill 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. 427 of the Public Acts of 1994, being section 791.234a of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 34a of Act No. 232 of the Public Acts of  
2 1953, as amended by Act No. 427 of the Public Acts of 1994, being  
3 section 791.234a of the Michigan Compiled Laws, is amended to  
4 read as follows:

5 Sec. 34a. (1) A prisoner sentenced either before, on, or  
6 after the effective date of the amendatory act that added this  
7 section to an indeterminate term of imprisonment under the juris-  
8 diction of the department shall be considered by the department  
9 for placement in a special alternative incarceration unit estab-  
10 lished under section 3 of the special alternative incarceration  
11 act, Act No. 287 of the Public Acts of 1988, being section 798.13  
12 of the Michigan Compiled Laws, if the prisoner meets the eligi-  
13 bility requirements of ~~subsections (2) and (3)~~ SUBSECTION (2).  
14 For a prisoner committed to the jurisdiction of the department on  
15 or after March 19, 1992, the department shall determine before  
16 the prisoner leaves the reception center whether the prisoner is  
17 eligible for placement in a special alternative incarceration  
18 unit, although actual placement may take place at a later date.  
19 A determination of eligibility does not guarantee placement in a  
20 unit.

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

24 (a) The prisoner's minimum sentence does not exceed ~~either~~  
25 ~~of the following limits, as applicable:~~ 60 MONTHS.

1 ~~(i) 24 months or less for a violation of section 110 of the~~  
2 ~~Michigan penal code, Act No. 110 of the Public Acts of 1931,~~  
3 ~~being section 750.110 of the Michigan Compiled Laws, if the vio-~~  
4 ~~lation involved any occupied dwelling house, as that term is~~  
5 ~~defined in that section.~~

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

7 (b) The prisoner has never previously been placed in a spe-  
8 cial alternative incarceration unit as either a prisoner or a  
9 probationer, unless he or she was removed from a special alterna-  
10 tive incarceration unit for medical reasons as specified in  
11 subsection ~~(6)~~ (5).

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

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

16 (e) The prisoner is serving his or her first prison  
17 sentence, UNLESS THE SENTENCING JUDGE SPECIFICALLY RECOMMENDED IN  
18 THE JUDGMENT OF SENTENCE THAT THE PRISONER BE PLACED IN A SPECIAL  
19 ALTERNATIVE INCARCERATION UNIT.

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

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

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

26 (i) A violation of section ~~11, 49, 80, 83, 89, 91, 157b,~~  
27 ~~158, 207, 260,~~ 316, 317, 327, 328, 335a, 338, 338a, 338b, 349,

1 349a, 350, ~~422,~~ 436, ~~511, 516, 517,~~ 520b, 529, 529a, ~~531,~~  
 2 or 544 of the Michigan penal code, Act No. 328 of the Public Acts  
 3 of 1931, being sections ~~750.11, 750.49, 750.80,~~ 750.83,  
 4 ~~750.89,~~ 750.91, 750.157b, 750.158, ~~750.207, 750.260,~~ 750.316,  
 5 750.317, 750.327, 750.328, 750.335a, 750.338, 750.338a, 750.338b,  
 6 750.349, 750.349a, 750.350, ~~750.422,~~ 750.436, ~~750.511,~~  
 7 ~~750.516, 750.517,~~ 750.520b, 750.529, 750.529a, ~~750.531,~~ and  
 8 750.544 of the Michigan Compiled Laws.

9 (ii) A violation of section 145c, 520c, 520d, or 520g of Act  
 10 No. 328 of the Public Acts of 1931, being sections 750.145c,  
 11 750.520c, 750.520d, and 750.520g of the Michigan Compiled Laws.

12 ~~(iii) A violation of section 72, 73, or 75 of Act No. 328~~  
 13 ~~of the Public Acts of 1931, being sections 750.72, 750.73, and~~  
 14 ~~750.75 of the Michigan Compiled Laws.~~

15 (iii) ~~(iv)~~ A violation of section ~~86, 112,~~ 136b, 193,  
 16 195, ~~213,~~ OR 319 ~~, 321, 329, or 397~~ of Act No. 328 of the  
 17 Public Acts of 1931, being sections ~~750.86, 750.112,~~ 750.136b,  
 18 750.193, 750.195, ~~750.213,~~ AND 750.319 ~~, 750.321, 750.329, and~~  
 19 ~~750.397~~ of the Michigan Compiled Laws.

20 ~~(v) A violation of section 2 of Act No. 302 of the Public~~  
 21 ~~Acts of 1968, being section 752.542 of the Michigan Compiled~~  
 22 ~~Laws.~~

23 ~~(vi) An attempt to commit a crime described in subparagraphs~~  
 24 ~~(i) to (v).~~

25 ~~(vii) A violation occurring on or after January 1, 1992, of~~  
 26 ~~section 625(4) or (5) of the Michigan vehicle code, Act No. 300~~

1 ~~of the Public Acts of 1949, being section 257.625 of the Michigan~~  
2 ~~Compiled Laws.~~

3 (iv) ~~(viii)~~ A crime for which the prisoner was punished  
4 pursuant to section 10, 11, or 12 of chapter IX of the code of  
5 criminal procedure, Act No. 175 of the Public Acts of 1927, being  
6 sections 769.10, 769.11, and 769.12 of the Michigan Compiled  
7 Laws, UNLESS THE SENTENCING JUDGE SPECIFICALLY RECOMMENDED IN THE  
8 JUDGMENT OF SENTENCE THAT THE PRISONER BE PLACED IN A SPECIAL  
9 ALTERNATIVE INCARCERATION UNIT.

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

19 (3) ~~(4)~~ If the sentencing judge prohibited a prisoner's  
20 participation in the special alternative incarceration program in  
21 the judgment of sentence, that prisoner shall not be placed in a  
22 special alternative incarceration unit. If the sentencing judge  
23 permitted the prisoner's participation in the special alternative  
24 incarceration program in the judgment of sentence, that prisoner  
25 may be placed in a special alternative incarceration unit if the  
26 department determines that the prisoner also meets the  
27 requirements of ~~subsections (2) and (3)~~ SUBSECTION (2). If the

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

24 (4) ~~(5)~~ Notwithstanding subsection ~~(4)~~ (3), a prisoner  
25 shall not be placed in a special alternative incarceration unit  
26 unless the prisoner consents to that placement and agrees that  
27 the department may suspend or restrict privileges generally

1 afforded other prisoners including, but not limited to, the areas  
2 of visitation, property, mail, publications, commissary, library,  
3 and telephone access. However, the department may not suspend or  
4 restrict the prisoner's access to the prisoner grievance system.

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

20 (6) ~~(7)~~ Upon certification of completion of the special  
21 alternative incarceration program, the prisoner shall be placed  
22 on parole. A prisoner paroled under this section shall have con-  
23 ditions of parole as determined appropriate by the parole board  
24 and shall be placed on parole for not less than 18 months, or the  
25 balance of the prisoner's minimum sentence, whichever is greater,  
26 with at least the first 120 days under intensive supervision.

1       (7) ~~(8)~~ The parole board may suspend or revoke parole for  
2 any prisoner paroled under this section subject to sections 39a  
3 and 40a. For a prisoner other than a prisoner subject to disci-  
4 plinary time, if parole is revoked before the expiration of the  
5 prisoner's minimum sentence, less disciplinary credits, the  
6 parole board shall forfeit, pursuant to section 33(13) of Act  
7 No. 118 of the Public Acts of 1893, being section 800.33 of the  
8 Michigan Compiled Laws, all disciplinary credits that were accu-  
9 mulated during special alternative incarceration, and the pris-  
10 oner shall be considered for parole pursuant to section 35.

11       (8) ~~(9)~~ On March 19, 1993, and annually after that time,  
12 the department shall report to the legislature the impact of the  
13 operation of this section, including a report concerning  
14 recidivism.

15       (9) ~~(10)~~ The provisions of this section regarding prison-  
16 ers subject to disciplinary time take effect beginning on the  
17 effective date of Act No. 217 of the Public Acts of 1994, as pre-  
18 scribed in enacting section 2 of that amendatory act.