



SENATE BILL No. 407

March 16, 1995, Introduced by Senators SHUGARS and MC MANUS
and referred to the Committee on Judiciary.

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). For a prisoner
14 committed to the jurisdiction of the department on or after
15 March 19, 1992, the department shall determine before the pris-
16 oner leaves the reception center whether the prisoner is eligible
17 for placement in a special alternative incarceration unit,
18 although actual placement may take place at a later date. A
19 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:~~ DATE OF PLACEMENT OCCURS

1 NOT MORE THAN 36 MONTHS BEFORE THE EARLIEST DATE ON WHICH THE
2 PRISONER OTHERWISE WOULD BE ELIGIBLE FOR PAROLE.

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

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

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

14 (c) The prisoner is physically able to participate in the
15 program.

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

18 (e) The prisoner is serving his or her first prison
19 sentence.

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, or 544
2 of the Michigan penal code, Act No. 328 of the Public Acts of
3 1931, being sections 750.11, 750.49, 750.80, 750.83, 750.89,
4 750.91, 750.157b, 750.158, 750.207, 750.260, 750.316, 750.317,
5 750.327, 750.328, 750.335a, 750.338, 750.338a, 750.338b, 750.349,
6 750.349a, 750.350, 750.422, 750.436, 750.511, 750.516, 750.517,
7 750.520b, 750.529, 750.529a, 750.531, and 750.544 of the Michigan
8 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 of
13 the Public Acts of 1931, being sections 750.72, 750.73, and
14 750.75 of the Michigan Compiled Laws.

15 (iv) A violation of section 86, 112, 136b, 193, 195, 213,
16 319, 321, 329, or 397 of Act No. 328 of the Public Acts of 1931,
17 being sections 750.86, 750.112, 750.136b, 750.193, 750.195,
18 750.213, 750.319, 750.321, 750.329, and 750.397 of the Michigan
19 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 (viii) A crime for which the prisoner was punished pursuant
4 to section 10, 11, or 12 of chapter IX of the code of criminal
5 procedure, Act No. 175 of the Public Acts of 1927, being sections
6 769.10, 769.11, and 769.12 of the Michigan Compiled Laws. THIS
7 SUBPARAGRAPH DOES NOT APPLY IF THE PRISONER HAS NEVER PREVIOUSLY
8 SERVED A TERM OF IMPRISONMENT IN A STATE CORRECTIONAL FACILITY
9 AND IF THE PRISONER'S CONVICTION IS FOR A FELONY OR FELONIES NOT
10 LISTED IN SUBPARAGRAPHS (i) TO (vii).

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 is not eligible for placement
17 in a special alternative incarceration unit until after he or she
18 has served the equivalent of the mandatory minimum sentence pre-
19 scribed by statute for that violation.

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

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

25 (5) Notwithstanding subsection (4), a prisoner shall not be
26 placed in a special alternative incarceration unit unless the
27 prisoner consents to that placement and agrees that the

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

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

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

1 (8) The parole board may suspend or revoke parole for any
2 prisoner paroled under this section subject to sections 39a and
3 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 (9) On March 19, 1993, and annually after that time, the
12 department shall report to the legislature the impact of the
13 operation of this section, including a report concerning
14 recidivism.

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