

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 377

A bill to amend 1953 PA 232, entitled

"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 allow for the operation of certain facilities by private entities; 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,"

by amending section 34a (MCL 791.234a), as amended by 1994 PA 427.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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~~ JANUARY 6, 1995 to an indeterminate term of imprisonment
4 under the jurisdiction of the department shall be considered by
5 the department for placement in a special alternative incarceration
6 tion unit established under section 3 of the special alternative
7 incarceration act, ~~Act No. 287 of the Public Acts of 1988, being~~
8 ~~section 798.13 of the Michigan Compiled Laws~~ 1988 PA 287, MCL
9 798.13, if the prisoner meets the eligibility requirements of
10 subsections (2) and (3). For a prisoner committed to the juris-
11 diction of the department on or after March 19, 1992, the depart-
12 ment shall determine before the prisoner leaves the reception
13 center whether the prisoner is eligible for placement in a spe-
14 cial 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 (i) 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~~ 1931 PA 328,
25 MCL 750.110, if the violation involved any occupied dwelling
26 house, as that term is defined in that section.

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

2 (b) The prisoner has never previously been placed in a spe-
3 cial 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
10 ~~handicap~~ DISABILITY that would prevent participation in the
11 program.

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

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

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

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

20 (i) A violation of section 11, 49, 80, 83, 89, 91, 157b,
21 158, 207, 260, 316, 317, 327, 328, 335a, 338, 338a, 338b, 349,
22 349a, 350, 422, 436, 511, 516, 517, 520b, 529, 529a, 531, or 544
23 of the Michigan penal code, ~~Act No. 328 of the Public Acts of~~
24 ~~1931, being sections 750.11, 750.49, 750.80, 750.83, 750.89,~~
25 ~~750.91, 750.157b, 750.158, 750.207, 750.260, 750.316, 750.317,~~
26 ~~750.327, 750.328, 750.335a, 750.338, 750.338a, 750.338b, 750.349,~~
27 ~~750.349a, 750.350, 750.422, 750.436, 750.511, 750.516, 750.517,~~

SB0377, As Passed House, February 25, 1998

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1 ~~750.520b, 750.529, 750.529a, 750.531, and 750.544 of the Michigan~~
2 ~~Compiled Laws~~ 1931 PA 328, MCL 750.11, 750.49, 750.80, 750.83,
3 750.89, 750.91, 750.157B, 750.158, 750.207, 750.260, 750.316,
4 750.317, 750.327, 750.328, 750.335A, 750.338, 750.338A, 750.338B,
5 750.349, 750.349A, 750.350, 750.422, 750.436, 750.511, 750.516,
6 750.517, 750.520B, 750.529, 750.529A, 750.531, AND 750.544.

7 (ii) A violation of section 145c, 520c, 520d, or 520g of
8 ~~Act No. 328 of the Public Acts of 1931, being sections 750.145c,~~
9 ~~750.520c, 750.520d, and 750.520g of the Michigan Compiled Laws~~
10 THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.145C, 750.520C,
11 750.520D, AND 750.520G.

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~~ THE MICHIGAN PENAL CODE,
15 1931 PA 328, MCL 750.72, 750.73, AND 750.75.

16 (iv) A violation of section 86, 112, 136b, 193, 195, 213,
17 319, 321, 329, or 397 of ~~Act No. 328 of the Public Acts of 1931,~~
18 ~~being sections 750.86, 750.112, 750.136b, 750.193, 750.195,~~
19 ~~750.213, 750.319, 750.321, 750.329, and 750.397 of the Michigan~~
20 ~~Compiled Laws~~ THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.86,
21 750.112, 750.136B, 750.193, 750.195, 750.213, 750.319, 750.321,
22 750.329, AND 750.397.

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

26 (vi) An attempt to commit a crime described in subparagraphs
27 (i) to (v).

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

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

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~~ 1978 PA 368, MCL 333.7401 AND
14 333.7403, and who has previously been convicted for a violation
15 of section 7401 or 7403(2)(a), (b), or (e) of ~~Act No. 368 of the~~
16 ~~Public Acts of 1978~~ THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
17 333.7401 AND 333.7403, is not eligible for placement in a special
18 alternative incarceration unit until after he or she has served
19 the equivalent of the mandatory minimum sentence prescribed by
20 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~~
13 ~~1985, being section 780.769 of the Michigan Compiled Laws~~ 1985
14 PA 87, MCL 780.769, of the proposed placement of the prisoner in
15 the special alternative incarceration unit not later than 30 days
16 before placement is intended to occur. The department shall not
17 place the prisoner in a special alternative incarceration unit
18 unless the sentencing judge, or the judge's successor, notifies
19 the department, in writing, that he or she does not object to the
20 proposed placement. In making the decision on whether or not to
21 object, the judge, or judge's successor, shall review any impact
22 statement submitted pursuant to section 14 of ~~Act No. 87 of the~~
23 ~~Public Acts of 1985, being section 780.764 of the Michigan~~
24 ~~Compiled Laws~~ THE CRIME VICTIM'S RIGHTS ACT, 1985 PA 87, MCL
25 780.764, by the victim or victims of the crime of which the pris-
26 oner was convicted.

1 (5) Notwithstanding subsection (4), a prisoner shall not be
2 placed in a special alternative incarceration unit unless the
3 prisoner consents to that placement and agrees that the depart-
4 ment may suspend or restrict privileges generally afforded other
5 prisoners including, but not limited to, the areas of visitation,
6 property, mail, publications, commissary, library, and telephone
7 access. However, the department may not suspend or restrict the
8 prisoner's access to the prisoner grievance system.

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

24 (7) Upon certification of completion of the special alterna-
25 tive incarceration program, the prisoner shall be placed on
26 parole. A prisoner paroled under this section shall have
27 conditions of parole as determined appropriate by the parole

1 board and shall be placed on parole for not less than 18 months,
2 or the balance of the prisoner's minimum sentence, whichever is
3 greater, with at least the first 120 days under intensive
4 supervision.

5 (8) The parole board may suspend or revoke parole for any
6 prisoner paroled under this section subject to sections 39a and
7 40a. For a prisoner other than a prisoner subject to disci-
8 plinary time, if parole is revoked before the expiration of the
9 prisoner's minimum sentence, less disciplinary credits, the
10 parole board shall forfeit, pursuant to section 33(13) of ~~Act~~
11 ~~No. 118 of the Public Acts of 1893, being section 800.33 of the~~
12 ~~Michigan Compiled Laws~~ 1893 PA 118, MCL 800.33, all disciplinary
13 credits that were accumulated during special alternative incar-
14 ceration, and the prisoner shall be considered for parole pursu-
15 ant to section 35.

16 (9) On March 19, 1993, and annually after that time, the
17 department shall report to the legislature the impact of the
18 operation of this section, including a report concerning
19 recidivism.

20 (10) The provisions of this section regarding prisoners
21 subject to disciplinary time take effect beginning on the effec-
22 tive date of ~~Act No. 217 of the Public Acts of 1994~~ 1994 PA
23 217, as prescribed in enacting section 2 of that amendatory act.