

Act No. 49  
Public Acts of 1998  
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STATE OF MICHIGAN  
89TH LEGISLATURE  
REGULAR SESSION OF 1998

Introduced by Senator V. Smith

# ENROLLED SENATE BILL No. 370

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 3b of chapter XI and section 19a of chapter XV (MCL 771.3b and 775.19a), section 3b of chapter XI as amended by 1994 PA 426 and section 19a of chapter XV as amended by 1982 PA 203.

*The People of the State of Michigan enact:*

## CHAPTER XI

Sec. 3b. (1) In addition to any other terms or conditions of probation provided for under this chapter, the court may require under a probation order that a person convicted of a crime, except a crime specified in subsection (17), for which a sentence in a state correctional facility may be imposed shall satisfactorily complete a program of incarceration in a special alternative incarceration unit, and a period of not less than 120 days of probation under intensive supervision. The special alternative incarceration program shall be established and operated by the department of corrections as provided in the special alternative incarceration act, 1988 PA 287, MCL 798.11 to 798.18. The court also may require the person to satisfactorily complete a local residential program of vocational training, education, and substance abuse treatment, pursuant to subsection (9) or (10).

(2) In order for a person to be placed in a special alternative incarceration program, the person shall meet all of the following requirements:

- (a) The person has never served a sentence of imprisonment in a state correctional facility.

(b) The person would likely be sentenced to imprisonment in a state correctional facility.

(c) The felony sentencing guidelines upper limit for the recommended minimum sentence for the person's offense is 12 months or more, as determined by the department. This subdivision does not apply in either of the following circumstances:

(i) The person's offense is not covered by the felony sentencing guidelines.

(ii) The reason for the person being considered for placement is that he or she violated the conditions of his or her probation.

(d) The person is physically able to participate in the special alternative incarceration program.

(e) The person does not appear to have any mental disability that would prevent participation in the special alternative incarceration program.

(3) Subsection (2)(b) and (c) do not prevent the department of corrections from entering into contracts with counties for participation in the county jail special alternative incarceration program. The county jail special alternative program is a program in which convicted felons who would have been sentenced to a county jail with a sentence of 6 to 12 months can participate.

(4) Before a court may place a person pursuant to this section, an initial investigation shall be completed by the probation officer. The initial investigation shall establish that the person meets the requirements of subsection (2)(a) and (b).

(5) After a person is placed in a special alternative incarceration program, the department shall establish that the person meets the requirements of subsection (2). If the person does not meet the requirements of subsection (2), the person shall be returned to the court for sentencing. The placement of a person in a special alternative incarceration program is conditioned upon the person meeting the requirements of subsection (2). If a person does not meet the requirements of subsection (2), the probation order is rescinded, and the person shall be sentenced in the manner provided by law.

(6) A person shall not be placed in a program of special alternative incarceration unless the person consents to the placement.

(7) In every case in which a person is placed in a special alternative incarceration program, the clerk of the sentencing court shall, within 5 working days after the placement, mail to the department of corrections a certified copy of the judgment of sentence and the presentence investigation report of the person being placed.

(8) Except as provided in subsections (9) to (12), a person shall be placed in a special alternative incarceration program for a period of not more than 120 days. If, during that period, the person misses more than 5 days of program participation due to medical excuse for illness or injury occurring after he or she was placed in the program, the period of placement shall be increased by the number of days missed, beginning with the sixth day of medical excuse, up to a maximum of 20 days. A medical excuse shall be verified by a physician's statement, a copy of which shall be provided to the sentencing court. A person who is medically unable to participate in the program for more than 25 days shall be returned to the court for sentencing pursuant to subsection (5).

(9) The order of probation under subsection (1) may require that a person who successfully completes a special alternative incarceration program also successfully complete an additional period of not more than 120 days of residential treatment in the local governmental jurisdiction from which the person was committed, beginning immediately upon completion of the special alternative incarceration program, if the local unit of government has created a residential program providing vocational training, education, and substance abuse treatment, designed in whole or in part for persons who complete a program of special alternative incarceration.

(10) The order of probation under subsection (1) may authorize the department of corrections to require a person who successfully completes a special alternative incarceration program to also successfully complete an additional period of not more than 120 days of residential treatment in a program operated by the department of corrections pursuant to section 4(2) of the special alternative incarceration act, 1988 PA 287, MCL 798.14. A probationer sentenced pursuant to subsection (9) is not eligible for residential treatment pursuant to this subsection.

(11) An order of probation under subsection (1) that requires an additional period of residential treatment upon completion of the special alternative incarceration program shall be considered to be entered pursuant to subsection (9).

(12) A person who successfully completes a program of special alternative incarceration shall be placed on probation under intensive supervision for a period of not less than 120 days. The period of probation under intensive supervision shall begin upon the completion of the program of special alternative incarceration, unless the person has been ordered to complete an additional program of residential treatment as described in subsection (9) or (10), in which case the period of probation under intensive supervision shall begin upon completion of the program of residential treatment.

(13) Upon receiving a satisfactory report of performance in the program from the department of corrections, the court shall authorize the release of the person from confinement in the special alternative incarceration unit. The receipt of an unsatisfactory report shall be grounds for revocation of probation as would any other violation of a condition or term of probation.

(14) A term of special alternative incarceration shall be served in the manner provided in the special alternative incarceration act, 1988 PA 287, MCL 798.11 to 798.18.

(15) Except as provided in subsection (16), a person shall not be incarcerated in a special alternative incarceration unit more than once.

(16) If a person was placed in a special alternative incarceration program but was returned to the court for sentencing because of a medical condition existing at the time of the placement, the person may be placed again in a special alternative incarceration program after the medical condition is corrected.

(17) A person who is convicted of any of the following crimes shall not be eligible for placement in the special alternative incarceration program:

(a) A crime described in section 145c, 520b, 520c, 520d, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145c, 750.520b, 750.520c, 750.520d, and 750.520g.

(b) Section 72, 73, or 75 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.73, and 750.75.

(c) An attempt to commit a crime described in subdivision (a) or (b).

CHAPTER XV

Sec. 19a. If an accused person is about to be examined or tried and it appears to the judge that the person is incapable of adequately understanding the charge or presenting a defense to the charge because of a lack of ability to understand or speak the English language, the inability to adequately communicate by reason of being mute, or because the person suffers from a speech defect or other physical defect which impairs the person in maintaining his or her rights in the case, the judge shall appoint a qualified person to act as an interpreter. Except as provided in the deaf persons' interpreter act, the interpreter shall be compensated for his or her services in the same amount and manner as is provided for interpreters in section 19 of this chapter.

This act is ordered to take immediate effect.



Secretary of the Senate.



Clerk of the House of Representatives.

Approved \_\_\_\_\_

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Governor.