

Act No. 84  
Public Acts of 1998  
Approved by the Governor  
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STATE OF MICHIGAN  
89TH LEGISLATURE  
REGULAR SESSION OF 1998

**Introduced by Senators Rogers, Conroy, Gougeon, North, Bullard, Vaughn, V. Smith, Peters, A. Smith, DeBeaussaert, Young, Stallings, Byrum and Koivisto**

# **ENROLLED SENATE BILL No. 377**

AN ACT 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:*

Sec. 34a. (1) A prisoner sentenced either before, on, or after January 6, 1995 to an indeterminate term of imprisonment under the jurisdiction of the department shall be considered by the department for placement in a special alternative incarceration unit established under section 3 of the special alternative incarceration act, 1988 PA 287, MCL 798.13, if the prisoner meets the eligibility requirements of subsections (2) and (3). For a prisoner committed to the jurisdiction of the department on or after March 19, 1992, the department shall determine before the prisoner leaves the reception center whether the prisoner is eligible for placement in a special alternative incarceration unit, although actual placement may take place at a later date. A determination of eligibility does not guarantee placement in a unit.

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

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

(i) 24 months or less for a violation of section 110 of the Michigan penal code, 1931 PA 328, MCL 750.110, if the violation involved any occupied dwelling house, as that term is defined in that section.

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

(b) The prisoner has never previously been placed in a special alternative incarceration unit as either a prisoner or a probationer, unless he or she was removed from a special alternative incarceration unit for medical reasons as specified in subsection (6).

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

- (d) The prisoner does not appear to have any mental disability that would prevent participation in the program.
  - (e) The prisoner is serving his or her first prison sentence.
  - (f) At the time of sentencing, the judge did not prohibit participation in the program in the judgment of sentence.
  - (g) The prisoner is otherwise suitable for the program, as determined by the department.
  - (h) The prisoner is not serving a sentence for any of the following crimes:
    - (i) A violation of section 11, 49, 80, 83, 89, 91, 157b, 158, 207, 260, 316, 317, 327, 328, 335a, 338, 338a, 338b, 349, 349a, 350, 422, 436, 511, 516, 517, 520b, 529, 529a, 531, or 544 of the Michigan penal code, 1931 PA 328, MCL 750.11, 750.49, 750.80, 750.83, 750.89, 750.91, 750.157b, 750.158, 750.207, 750.260, 750.316, 750.317, 750.327, 750.328, 750.335a, 750.338, 750.338a, 750.338b, 750.349, 750.349a, 750.350, 750.422, 750.436, 750.511, 750.516, 750.517, 750.520b, 750.529, 750.529a, 750.531, and 750.544.
    - (ii) A violation of section 145c, 520c, 520d, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.145c, 750.520c, 750.520d, and 750.520g.
    - (iii) A violation of section 72, 73, or 75 of the Michigan penal code, 1931 PA 328, MCL 750.72, 750.73, and 750.75.
    - (iv) A violation of section 86, 112, 136b, 193, 195, 213, 319, 321, 329, or 397 of the Michigan penal code, 1931 PA 328, MCL 750.86, 750.112, 750.136b, 750.193, 750.195, 750.213, 750.319, 750.321, 750.329, and 750.397.
    - (v) A violation of section 2 of 1968 PA 302, MCL 752.542.
    - (vi) An attempt to commit a crime described in subparagraphs (i) to (v).
    - (vii) A violation occurring on or after January 1, 1992, of section 625(4) or (5) of the Michigan vehicle code, 1949 PA 300, MCL 257.625.
    - (viii) A crime for which the prisoner was punished pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.
- (3) A prisoner who is serving a sentence for a violation of section 7401 or 7403 of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and who has previously been convicted for a violation of section 7401 or 7403(2)(a), (b), or (e) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, is not eligible for placement in a special alternative incarceration unit until after he or she has served the equivalent of the mandatory minimum sentence prescribed by statute for that violation.
- (4) If the sentencing judge prohibited a prisoner's participation in the special alternative incarceration program in the judgment of sentence, that prisoner shall not be placed in a special alternative incarceration unit. If the sentencing judge permitted the prisoner's participation in the special alternative incarceration program in the judgment of sentence, that prisoner may be placed in a special alternative incarceration unit if the department determines that the prisoner also meets the requirements of subsections (2) and (3). If the sentencing judge neither prohibited nor permitted a prisoner's participation in the special alternative incarceration program in the judgment of sentence, and the department determines that the prisoner meets the eligibility requirements of subsections (2) and (3), the department shall notify the judge or the judge's successor, the prosecuting attorney for the county in which the prisoner was sentenced, and any victim of the crime for which the prisoner was committed if the victim has submitted to the department a written request for any notification pursuant to section 19(1) of the crime victim's rights act, 1985 PA 87, MCL 780.769, of the proposed placement of the prisoner in the special alternative incarceration unit not later than 30 days before placement is intended to occur. The department shall not place the prisoner in a special alternative incarceration unit unless the sentencing judge, or the judge's successor, notifies the department, in writing, that he or she does not object to the proposed placement. In making the decision on whether or not to object, the judge, or judge's successor, shall review any impact statement submitted pursuant to section 14 of the crime victim's rights act, 1985 PA 87, MCL 780.764, by the victim or victims of the crime of which the prisoner was convicted.
- (5) Notwithstanding subsection (4), a prisoner shall not be placed in a special alternative incarceration unit unless the prisoner consents to that placement and agrees that the department may suspend or restrict privileges generally afforded other prisoners including, but not limited to, the areas of visitation, property, mail, publications, commissary, library, and telephone access. However, the department may not suspend or restrict the prisoner's access to the prisoner grievance system.
- (6) A prisoner may be placed in a special alternative incarceration program for a period of not less than 90 days or more than 120 days. If, during that period, the prisoner 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. However, the total number of days a prisoner may be placed in this program, including days missed due to medical excuse, shall not exceed 120 days. A medical excuse shall be verified by a physician's statement. A prisoner who is medically unable to participate in the program for more than 25 days shall be returned to a state correctional facility but may be reassigned to the program if the prisoner meets the eligibility requirements of subsections (2) and (3).
- (7) Upon certification of completion of the special alternative incarceration program, the prisoner shall be placed on parole. A prisoner paroled under this section shall have conditions of parole as determined appropriate by the parole

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

(8) The parole board may suspend or revoke parole for any prisoner paroled under this section subject to sections 39a and 40a. For a prisoner other than a prisoner subject to disciplinary time, if parole is revoked before the expiration of the prisoner's minimum sentence, less disciplinary credits, the parole board shall forfeit, pursuant to section 33(13) of 1893 PA 118, MCL 800.33, all disciplinary credits that were accumulated during special alternative incarceration, and the prisoner shall be considered for parole pursuant to section 35.

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

(10) The provisions of this section regarding prisoners subject to disciplinary time take effect beginning on the effective date of 1994 PA 217, as prescribed in enacting section 2 of that amendatory act.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

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Secretary of the Senate.

*Mary R. Bell*

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Clerk of the House of Representatives.

Approved \_\_\_\_\_

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Governor.