

SENATE BILL NO. 475

March 24, 1999, Introduced by Senators ROGERS, STEIL, BULLARD, BENNETT, SHUGARS and HAMMERSTROM and referred to the Committee on Judiciary.

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 1998 PA 315.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 34a. (1) A prisoner sentenced to an indeterminate term
2 of imprisonment under the jurisdiction of the department, regard-
3 less of when he or she was sentenced, shall be considered by the
4 department for placement in a special alternative incarceration
5 unit established under section 3 of the special alternative
6 incarceration act, 1988 PA 287, MCL 798.13, if the prisoner meets
7 the eligibility requirements of ~~subsections (2) and (3)~~

8 SUBSECTION (2). For a prisoner committed to the jurisdiction of
9 the department on or after March 19, 1992, the department shall
10 determine before the prisoner leaves the reception center whether
11 the prisoner is eligible for placement in a special alternative
12 incarceration unit, although actual placement may take place at a
13 later date. A determination of eligibility does not guarantee
14 placement in a unit.

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

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

20 (A) ~~(i) 24 months or less~~ IF THE PRISONER IS SERVING A
21 SENTENCE for a violation of section ~~110~~ 110A of the Michigan
22 penal code, 1931 PA 328, ~~MCL 750.110, if the violation involved~~
23 ~~any occupied dwelling house~~ MCL 750.110A, THE PRISONER'S MINIMUM
24 SENTENCE IS 24 MONTHS OR LESS.

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

1 (B) IF THE PRISONER IS SERVING A SENTENCE FOR ANY CRIME
2 OTHER THAN THE CRIME SPECIFIED IN SUBDIVISION (A), THE DATE OF
3 PLACEMENT IN A SPECIAL ALTERNATIVE INCARCERATION UNIT OCCURS NOT
4 MORE THAN 36 MONTHS BEFORE THE EARLIEST DATE ON WHICH THE PRIS-
5 ONER OTHERWISE WOULD BE ELIGIBLE FOR PAROLE.

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

11 (D) ~~-(c)-~~ The prisoner is physically able to participate in
12 the program.

13 (E) ~~-(d)-~~ The prisoner does not appear to have any mental
14 disability that would prevent participation in the program.

15 (F) ~~-(e)-~~ The prisoner is serving his or her first prison
16 sentence.

17 (G) ~~-(f)-~~ At the time of sentencing, the judge did not pro-
18 hibit participation in the program in the judgment of sentence.

19 (H) ~~-(g)-~~ The prisoner is otherwise suitable for the pro-
20 gram, as determined by the department.

21 (I) ~~-(h)-~~ The prisoner is not serving a sentence for any of
22 the following crimes:

23 (i) A violation of section 11, 49, 80, 83, 89, 91, 157b,
24 158, 207, 260, 316, 317, 327, 328, 335a, 338, 338a, 338b, 349,
25 349a, 350, 422, 436, 511, 516, 517, 520b, 529, 529a, 531, or 544
26 of the Michigan penal code, 1931 PA 328, MCL 750.11, 750.49,
27 750.80, 750.83, 750.89, 750.91, 750.157b, 750.158, 750.207,

1 750.260, 750.316, 750.317, 750.327, 750.328, 750.335a, 750.338,
2 750.338a, 750.338b, 750.349, 750.349a, 750.350, 750.422, 750.436,
3 750.511, 750.516, 750.517, 750.520b, 750.529, 750.529a, 750.531,
4 and 750.544.

5 (ii) A violation of section 145c, 520c, 520d, or 520g of the
6 Michigan penal code, 1931 PA 328, MCL 750.145c, 750.520c,
7 750.520d, and 750.520g.

8 (iii) A violation of section 72, 73, or 75 of the Michigan
9 penal code, 1931 PA 328, MCL 750.72, 750.73, and 750.75.

10 (iv) A violation of section 86, 112, 136b, 193, 195, 213,
11 319, 321, 329, or 397 of the Michigan penal code, 1931 PA 328,
12 MCL 750.86, 750.112, 750.136b, 750.193, 750.195, 750.213,
13 750.319, 750.321, 750.329, and 750.397.

14 (v) A violation of section 2 of 1968 PA 302, MCL 752.542.

15 (vi) An attempt to commit a crime described in subparagraphs
16 (i) to (v).

17 (vii) A violation occurring on or after January 1, 1992, of
18 section 625(4) or (5) of the Michigan vehicle code, 1949 PA 300,
19 MCL 257.625.

20 (viii) A crime for which the prisoner was punished pursuant
21 to section 10, 11, or 12 of chapter IX of the code of criminal
22 procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12. THIS
23 SUBPARAGRAPH DOES NOT APPLY IF THE PRISONER HAS NEVER PREVIOUSLY
24 SERVED A TERM OF IMPRISONMENT IN A STATE CORRECTIONAL FACILITY
25 AND IF THE PRISONER'S PREVIOUS CONVICTION WAS NOT FOR A FELONY OR
26 FELONIES LISTED IN SUBPARAGRAPHS (i) TO (vii).

1 ~~(3) A prisoner who is serving a sentence for a violation of~~
2 ~~section 7401 or 7403 of the public health code, 1978 PA 368,~~
3 ~~MCL 333.7401 and 333.7403, and who has previously been convicted~~
4 ~~for a violation of section 7401 or 7403(2)(a), (b), or (c) of the~~
5 ~~public health code, 1978 PA 368, MCL 333.7401 and 333.7403, is~~
6 ~~not eligible for placement in a special alternative incarceration~~
7 ~~unit until after he or she has served the equivalent of the man-~~
8 ~~datory minimum sentence prescribed by statute for that~~
9 ~~violation.~~

10 (3) ~~(4)~~ If the sentencing judge prohibited a prisoner's
11 participation in the special alternative incarceration program in
12 the judgment of sentence, that prisoner shall not be placed in a
13 special alternative incarceration unit. If the sentencing judge
14 permitted the prisoner's participation in the special alternative
15 incarceration program in the judgment of sentence, that prisoner
16 may be placed in a special alternative incarceration unit if the
17 department determines that the prisoner also meets the require-
18 ments of ~~subsections (2) and (3)~~ SUBSECTION (2). If the sen-
19 tencing judge neither prohibited nor permitted a prisoner's par-
20 ticipation in the special alternative incarceration program in
21 the judgment of sentence, and the department determines that the
22 prisoner meets the eligibility requirements of ~~subsections (2)~~
23 ~~and (3)~~ SUBSECTION (2), the department shall notify the judge or
24 the judge's successor, the prosecuting attorney for the county in
25 which the prisoner was sentenced, and any victim of the crime for
26 which the prisoner was committed if the victim has submitted to
27 the department a written request for any notification pursuant to

1 section 19(1) of the crime victim's rights act, 1985 PA 87,
2 MCL 780.769, of the proposed placement of the prisoner in the
3 special alternative incarceration unit not later than 30 days
4 before placement is intended to occur. The department shall not
5 place the prisoner in a special alternative incarceration unit
6 unless the sentencing judge, or the judge's successor, notifies
7 the department, in writing, that he or she does not object to the
8 proposed placement. In making the decision on whether or not to
9 object, the judge, or judge's successor, shall review any impact
10 statement submitted pursuant to section 14 of the crime victim's
11 rights act, 1985 PA 87, MCL 780.764, by the victim or victims of
12 the crime of which the prisoner was convicted.

13 (4) ~~-(5)-~~ Notwithstanding subsection ~~-(4)-~~ (3), a prisoner
14 shall not be placed in a special alternative incarceration unit
15 unless the prisoner consents to that placement and agrees that
16 the department may suspend or restrict privileges generally
17 afforded other prisoners including, but not limited to, the areas
18 of visitation, property, mail, publications, commissary, library,
19 and telephone access. However, the department may not suspend or
20 restrict the prisoner's access to the prisoner grievance system.

21 (5) ~~-(6)-~~ A prisoner may be placed in a special alternative
22 incarceration program for a period of not less than 90 days or
23 more than 120 days. If, during that period, the prisoner misses
24 more than 5 days of program participation due to medical excuse
25 for illness or injury occurring after he or she was placed in the
26 program, the period of placement shall be increased by the number
27 of days missed, beginning with the sixth day of medical excuse,

1 up to a maximum of 20 days. However, the total number of days a
2 prisoner may be placed in this program, including days missed due
3 to medical excuse, shall not exceed 120 days. A medical excuse
4 shall be verified by a physician's statement. A prisoner who is
5 medically unable to participate in the program for more than 25
6 days shall be returned to a state correctional facility but may
7 be reassigned to the program if the prisoner meets the eligibil-
8 ity requirements of ~~subsections (2) and (3)~~ SUBSECTION (2).

9 (6) ~~-(7)-~~ Upon certification of completion of the special
10 alternative incarceration program, the prisoner shall be placed
11 on parole. A prisoner paroled under this section shall have con-
12 ditions of parole as determined appropriate by the parole board
13 and shall be placed on parole for not less than 18 months, or the
14 balance of the prisoner's minimum sentence, whichever is greater,
15 with at least the first 120 days under intensive supervision.

16 (7) ~~-(8)-~~ The parole board may suspend or revoke parole for
17 any prisoner paroled under this section subject to sections 39a
18 and 40a. For a prisoner other than a prisoner subject to disci-
19 plinary time, if parole is revoked before the expiration of the
20 prisoner's minimum sentence, less disciplinary credits, the
21 parole board shall forfeit, pursuant to section 33(13) of 1893
22 PA 118, MCL 800.33, all disciplinary credits that were accumu-
23 lated during special alternative incarceration, and the prisoner
24 shall be considered for parole pursuant to section 35.

25 (8) ~~-(9)-~~ On March 19, 1993, and annually after that time,
26 the department shall report to the legislature the impact of the

1 operation of this section, including a report concerning
2 recidivism.