

HOUSE BILL No. 4272

February 14, 2007, Introduced by Rep. Condino and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 3b of chapter XI (MCL 771.3b), as amended by
1998 PA 49.

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)~~ (16), 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

1 incarceration program shall be established and operated by the
2 department of corrections as provided in the special alternative
3 incarceration act, 1988 PA 287, MCL 798.11 to 798.18. The court
4 also may require the person to satisfactorily complete a local
5 residential program of vocational training, education, and
6 substance abuse treatment, pursuant to subsection (9) or (10).

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

10 ~~— (a) The person has never served a sentence of imprisonment in~~
11 ~~a state correctional facility.~~

12 (A) ~~(b)~~—The person would likely be sentenced to imprisonment
13 in a state correctional facility.

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

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

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

22 (C) ~~(d)~~—The person is physically able to participate in the
23 special alternative incarceration program.

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

27 (3) Subsection ~~(2) (b) and (c) do~~ (2) (A) AND (B) DOES not

1 prevent the department of corrections from entering into contracts
2 with counties for participation in the county jail special
3 alternative incarceration program. The county jail special
4 alternative program is a program in which convicted felons who
5 would have been sentenced to a county jail with a sentence of 6 to
6 12 months can participate.

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

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

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

24 (7) In every case in which a person is placed in a special
25 alternative incarceration program, the clerk of the sentencing
26 court shall, within 5 working days after the placement, mail to the
27 department of corrections a certified copy of the judgment of

1 sentence and the presentence investigation report of the person
2 being placed.

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

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

26 (10) The order of probation under subsection (1) may authorize
27 the department of corrections to require a person who successfully

1 completes a special alternative incarceration program to also
2 successfully complete an additional period of not more than 120
3 days of residential treatment in a program operated by the
4 department of corrections pursuant to section 4(2) of the special
5 alternative incarceration act, 1988 PA 287, MCL 798.14. A
6 probationer sentenced pursuant to subsection (9) is not eligible
7 for residential treatment pursuant to this subsection.

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

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

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

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

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

7 (15) ~~(16)~~ If a person was placed in a special alternative
8 incarceration program but was returned to the court for sentencing
9 because of a medical condition existing at the time of the
10 placement, the person may be placed again in a special alternative
11 incarceration program after the medical condition is corrected.

12 (16) ~~(17)~~ A person who is convicted of any of the following
13 crimes ~~shall~~ **IS** not be eligible for placement in the special
14 alternative incarceration program:

15 (a) A crime described in section 145c, 520b, 520c, 520d, or
16 520g of the Michigan penal code, 1931 PA 328, MCL 750.145c,
17 750.520b, 750.520c, 750.520d, and 750.520g.

18 (b) Section 72, 73, or 75 of the Michigan penal code, 1931 PA
19 328, MCL 750.72, 750.73, and 750.75.

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