

HOUSE BILL No. 5311

September 2, 2009, Introduced by Rep. Smith and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending section 34a (MCL 791.234a), as amended by 2008 PA 158.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 34a. (1) A prisoner sentenced to an indeterminate term of
2 imprisonment under the jurisdiction of the department, regardless
3 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). For a
8 prisoner committed to the jurisdiction of the department on or
9 after March 19, 1992, the department shall determine before the
10 prisoner leaves the reception center whether the prisoner is

1 eligible for placement in a special alternative incarceration unit,
2 although actual placement may take place at a later date. A
3 determination of eligibility does not guarantee placement in a
4 unit.

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

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

10 (i) 24 months or less for a violation of section 110 of the
11 Michigan penal code, 1931 PA 328, MCL 750.110, if the violation
12 involved any occupied dwelling house.

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

14 (b) The prisoner is physically able to participate in the
15 program.

16 (c) The prisoner does not appear to have any mental disability
17 that would prevent participation in the program.

18 (d) The prisoner is serving his or her first or second prison
19 sentence.

20 (e) At the time of sentencing, the judge did not prohibit
21 participation in the program in the judgment of sentence.

22 (f) The prisoner is otherwise suitable for the program, as
23 determined by the department.

24 (g) The prisoner has not served, and is not serving, a
25 sentence for any of the following crimes:

26 (i) A violation of section 11, 49, 80, 83, 89, 91, 157b, 158,
27 207, 260, 316, 317, 327, 328, 335a, 338, 338a, 338b, 349, 349a,

1 350, 422, 436, 511, 520b, 529, 529a, 531, or 544 of the Michigan
2 penal code, 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, 750.520b,
6 750.529, 750.529a, 750.531, and 750.544.

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

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

12 (iv) A violation of section 86, 112, 136b, 193, 195, 213, 319,
13 321, 329, or 397 of the Michigan penal code, 1931 PA 328, MCL
14 750.86, 750.112, 750.136b, 750.193, 750.195, 750.213, 750.319,
15 750.321, 750.329, and 750.397.

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

17 (vi) An attempt to commit a crime described in subparagraphs
18 (i) to (v).

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

22 (viii) A crime for which the prisoner was punished pursuant to
23 section 10, 11, or 12 of chapter IX of the code of criminal
24 procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

25 (3) A prisoner who is serving a sentence for a violation of
26 section 7401 or 7403 of the public health code, 1978 PA 368, MCL
27 333.7401 and 333.7403, and who has previously been convicted for a

1 violation of section 7401 or 7403(2)(a), (b), or (e) of the public
2 health code, 1978 PA 368, MCL 333.7401 and 333.7403, is not
3 eligible for placement in a special alternative incarceration unit
4 until after he or she has served the equivalent of the mandatory
5 minimum sentence prescribed by statute for that violation.

6 (4) If the sentencing judge prohibited a prisoner's
7 participation in the special alternative incarceration program in
8 the judgment of sentence, that prisoner shall not be placed in a
9 special alternative incarceration unit. If the prisoner is serving
10 his or her first prison sentence and the sentencing judge permitted
11 the prisoner's participation in the special alternative
12 incarceration program in the judgment of sentence, that prisoner
13 may be placed in a special alternative incarceration unit if the
14 department determines that the prisoner also meets the requirements
15 of subsections (2) and (3). If the prisoner is serving his or her
16 first prison sentence and the sentencing judge neither prohibited
17 nor permitted a prisoner's participation in the special alternative
18 incarceration program in the judgment of sentence, or if the
19 prisoner is serving his or her second prison sentence regardless of
20 whether or not the judge permitted the prisoner's participation in
21 the program, and the department determines that the prisoner meets
22 the eligibility requirements of subsections (2) and (3), the
23 department shall notify the judge or the judge's successor, the
24 prosecuting attorney for the county in which the prisoner was
25 sentenced, and any victim of the crime for which the prisoner was
26 committed if the victim has submitted to the department a written
27 request for any notification pursuant to section 19(1) of the

1 William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL
2 780.769, of the proposed placement of the prisoner in the special
3 alternative incarceration unit. If the prisoner is serving his or
4 her first prison sentence, the notices shall be sent not later than
5 30 days before placement is intended to occur. If the prisoner is
6 serving his or her second prison sentence, the notices shall be
7 sent not later than 45 days before the placement is intended to
8 occur. The department shall not place the prisoner in a special
9 alternative incarceration unit unless the sentencing judge, or the
10 judge's successor, notifies the department, in writing, that he or
11 she does not object to the proposed placement. In making the
12 decision on whether or not to object, the judge, or judge's
13 successor, shall review any impact statement submitted pursuant to
14 section 14 of the William Van Regenmorter crime victim's rights
15 act, 1985 PA 87, MCL 780.764, by the victim or victims of the crime
16 of which the prisoner was convicted.

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

25 (6) Beginning September 30, 2008, and notwithstanding
26 subsections (4) and (5), a prisoner shall not be placed in a
27 special alternative incarceration unit unless all of the following

1 conditions are met for the prisoner at the special alternative
2 incarceration unit:

3 (a) Upon entry into the special alternative incarceration
4 unit, a validated risk and need assessment from which a prisoner-
5 specific transition accountability plan and prisoner-specific
6 programming during program enrollment are utilized.

7 (b) Interaction with community-based service providers through
8 established prison in-reach services from the community to which
9 the prisoner will return is utilized.

10 (c) Prisoner discharge planning is utilized.

11 (d) Community follow-up services are utilized.

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

27 (8) Upon certification of completion of the special

1 alternative incarceration program, the prisoner shall be placed on
2 parole. A prisoner paroled under this section shall have conditions
3 of parole as determined appropriate by the parole board and shall
4 be placed on parole for not less than 18 months, or the balance of
5 the prisoner's minimum sentence, whichever is greater, with at
6 least the first 120 days under intensive supervision.

7 (9) The parole board may suspend or revoke parole for any
8 prisoner paroled under this section subject to sections 39a and
9 40a. For a prisoner other than a prisoner subject to disciplinary
10 time, if parole is revoked before the expiration of the prisoner's
11 minimum sentence, less disciplinary credits, the parole board shall
12 forfeit, pursuant to section 33(13) of 1893 PA 118, MCL 800.33, all
13 disciplinary credits that were accumulated during special
14 alternative incarceration, and the prisoner shall be considered for
15 parole pursuant to section 35.

16 (10) 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 (11) The department shall contract annually for third party
21 evaluations that report on both of the following:

22 (a) The implementation of the requirements of subsection (6).

23 (b) The success of the special alternative incarceration
24 program as revised under subsection (6), as evidenced by the extent
25 to which participants subsequently violate the conditions of their
26 parole, have their orders of parole revoked, or revictimize as
27 evidenced by being arrested or convicted for new offenses,

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absconding from parole, or having outstanding warrants.

(12) Each prisoner or probationer placed in the special alternative incarceration program shall fully participate in the Michigan prisoner reentry initiative not later than the following date, as applicable:

(a) Each prisoner serving his or her second prison sentence shall participate not later than June 1, 2008.

(b) Each prisoner serving his or her first prison sentence shall participate not later than August 1, 2008.

(c) Each probationer shall participate not later than September 1, 2008.

[(13) This section is repealed effective September 30, 2009–2012.]