

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4538**

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending section 34a (MCL 791.234a), as added by 2009 PA 107.

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) Twenty-four months or less for a violation of section 110
11 **OR 110A** of the Michigan penal code, 1931 PA 328, MCL 750.110 **AND**
12 **750.110A**, if the violation involved any occupied dwelling house.

13 (ii) Thirty-six months or less for any other crime.

14 (b) The prisoner has never previously been placed in a special
15 alternative incarceration unit as either a prisoner or a
16 probationer, unless he or she was removed from a special
17 alternative incarceration unit for medical reasons as specified in
18 subsection (7). ~~This subdivision applies only to placements~~
19 ~~occurring on or after October 1, 2009, and does not apply to a~~
20 ~~prisoner placed in a special alternative incarceration unit before~~
21 ~~that date.~~

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

24 (d) The prisoner does not appear to have any mental disability
25 that would prevent participation in the program.

26 (e) The prisoner is serving his or her first prison sentence.

27 (f) At the time of sentencing, the judge did not prohibit

1 participation in the program in the judgment of sentence.

2 (g) The prisoner is otherwise suitable for the program, as
3 determined by the department.

4 (h) The prisoner is not serving a sentence for any of the
5 following crimes:

6 (i) A violation of section 11, 49, 80, 83, 89, 91, 157b, 158,
7 207, 260, 316, 317, 327, 328, 335a, 338, 338a, 338b, 349, 349a,
8 350, 422, 436, 511, 520b, 529, 529a, 531, or 544 of the Michigan
9 penal code, 1931 PA 328, MCL 750.11, 750.49, 750.80, 750.83,
10 750.89, 750.91, 750.157b, 750.158, 750.207, 750.260, 750.316,
11 750.317, 750.327, 750.328, 750.335a, 750.338, 750.338a, 750.338b,
12 750.349, 750.349a, 750.350, 750.422, 750.436, 750.511, 750.520b,
13 750.529, 750.529a, 750.531, and 750.544.

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

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

19 (iv) A violation of section 86, 112, 136b, 193, 195, 213, 319,
20 321, 329, or 397 of the Michigan penal code, 1931 PA 328, MCL
21 750.86, 750.112, 750.136b, 750.193, 750.195, 750.213, 750.319,
22 750.321, 750.329, and 750.397.

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

24 (vi) An attempt to commit a crime described in subparagraphs
25 (i) to (v).

26 (vii) A violation occurring on or after January 1, 1992, of
27 section 625(4) or (5) of the Michigan vehicle code, 1949 PA 300,

1 MCL 257.625.

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

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

13 (4) If the sentencing judge prohibited a prisoner's
14 participation in the special alternative incarceration program in
15 the judgment of sentence, that prisoner shall not be placed in a
16 special alternative incarceration unit. If the sentencing judge
17 permitted the prisoner's participation in the special alternative
18 incarceration program in the judgment of sentence, that prisoner
19 may be placed in a special alternative incarceration unit if the
20 department determines that the prisoner also meets the requirements
21 of subsections (2) and (3). If the sentencing judge neither
22 prohibited nor permitted a prisoner's participation in the special
23 alternative incarceration program in the judgment of sentence, ~~or~~
24 ~~if the prisoner is serving his or her sentence regardless of~~
25 ~~whether or not the judge permitted the prisoner's participation in~~
26 ~~the program,~~ and the department determines that the prisoner meets
27 the eligibility requirements of subsections (2) and (3), the

1 department shall notify the judge or the judge's successor, the
2 prosecuting attorney for the county in which the prisoner was
3 sentenced, and any victim of the crime for which the prisoner was
4 committed if the victim has submitted to the department a written
5 request for any notification pursuant to section 19(1) of the
6 William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL
7 780.769, of the proposed placement of the prisoner in the special
8 alternative incarceration unit. The notices shall be sent not later
9 than 30 days before placement is intended to occur. The department
10 shall not place the prisoner in a special alternative incarceration
11 unit unless the sentencing judge, or the judge's successor,
12 notifies the department, in writing, that he or she does not object
13 to the proposed placement. In making the decision on whether or not
14 to object, the judge, or judge's successor, shall review any impact
15 statement submitted pursuant to section 14 of the William Van
16 Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.764, by
17 the victim or victims of the crime of which the prisoner was
18 convicted.

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

27 (6) ~~Beginning September 30, 2008, and notwithstanding~~

1 **NOTWITHSTANDING** subsections (4) and (5), a prisoner shall not be
2 placed in a special alternative incarceration unit unless all of
3 the following conditions are met for the prisoner at the special
4 alternative incarceration unit:

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

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

12 (c) Prisoner discharge planning is utilized.

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

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

1 requirements of subsections (2) and (3).

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

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

18 (10) ~~On March 19, 1993, and annually after that time, the~~ **THE**
19 department shall report **ANNUALLY** to the legislature the impact of
20 the operation of this section, including a report concerning
21 recidivism.

22 (11) The department shall contract annually for third-party
23 evaluations that report on both of the following:

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

25 (b) The success of the special alternative incarceration
26 program as revised under subsection (6), as evidenced by the extent
27 to which participants subsequently violate the conditions of their

1 parole, have their orders of parole revoked, or revictimize as
2 evidenced by being arrested or convicted for new offenses,
3 absconding from parole, or having outstanding warrants.

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

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

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

12 ~~—— (c) Each probationer shall participate not later than~~
13 ~~September 1, 2008.~~

14 (13) This section is repealed effective September 30, ~~2010~~
15 **2012.**