

SENATE BILL No. 652

October 31, 1989, Introduced by Senators WELBORN, CARL, DINGELL and BARCIA and referred to the Committee on Criminal Justice and Urban Affairs.

A bill to amend section 3b of chapter XI of Act No. 175 of the Public Acts of 1927, entitled as amended "The code of criminal procedure," as added by Act No. 286 of the Public Acts of 1988, being section 771.3b of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 3b of chapter XI of Act No. 175 of the
2 Public Acts of 1927, as added by Act No. 286 of the Public Acts
3 of 1988, being section 771.3b of the Michigan Compiled Laws, is
4 amended to read as follows:

CHAPTER XI

6 Sec. 3b. (1) In addition to any other terms or conditions
7 of probation provided for under this chapter, the court may
8 require under a probation order that a person convicted of a
9 crime, except a crime specified in subsection ~~(10)~~ (12), for

1 which a sentence in a state correctional facility may be imposed
2 shall satisfactorily complete a program of incarceration in a
3 special alternative incarceration unit. The program shall be
4 established and operated by the department of corrections as pro-
5 vided in the special alternative incarceration act, ACT NO. 287
6 OF THE PUBLIC ACTS OF 1988, BEING SECTIONS 798.11 TO 798.18 OF
7 THE MICHIGAN COMPILED LAWS.

8 (2) In order for a person to be placed in a special alterna-
9 tive incarceration program, the person shall meet all of the fol-
10 lowing requirements:

11 (a) The person is not ~~less than 17 years of age nor~~ more
12 than 25 years of age at the time of sentencing.

13 (b) The person has never served a sentence of imprisonment
14 in a state correctional facility.

15 (c) The person would likely be sentenced to imprisonment in
16 a state correctional facility. ~~The court shall consider the~~
17 ~~sentencing guidelines established by the supreme court in making~~
18 ~~a determination under this subdivision.~~

19 (D) THE FELONY SENTENCING GUIDELINES UPPER LIMIT FOR THE
20 RECOMMENDED MINIMUM SENTENCE FOR THE PERSON'S OFFENSE IS 12
21 MONTHS OR MORE, AS DETERMINED BY THE DEPARTMENT.

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

24 (F) ~~-(e)-~~ The person does not appear to have any mental
25 handicap that would prevent participation in the special alterna-
26 tive incarceration program.

1 (3) Before a court ~~can~~ MAY place a person pursuant to this
2 section, an initial investigation shall be completed by the
3 probation officer. The initial investigation shall establish
4 that the person meets the requirements of subsection (2)(a) to
5 (c).

6 (4) After a person is placed in a special alternative incar-
7 ceration program, the department shall establish that the person
8 meets the requirements of subsection (2)(a) to (e). If the
9 person does not meet the requirements of subsection (2)(a) to
10 (e), the person shall be returned to the court for sentencing.
11 THE PLACEMENT OF A PERSON IN A SPECIAL ALTERNATIVE INCARCERATION
12 PROGRAM IS CONDITIONED UPON THE PERSON MEETING THE REQUIREMENTS
13 OF SUBSECTION (2)(A) TO (E). IF A PERSON IS RETURNED TO THE
14 COURT FOR SENTENCING UNDER THIS SUBSECTION, THE PLACEMENT SHALL
15 BE CONSIDERED VOID, AND THE PERSON SHALL BE SENTENCED IN THE
16 MANNER PROVIDED BY LAW AS IF HE OR SHE HAD NOT BEEN PLACED IN A
17 SPECIAL ALTERNATIVE INCARCERATION PROGRAM.

18 (5) A person shall not be placed in a program of special
19 alternative incarceration unless the person consents to the
20 placement.

21 (6) In every case in which a person is placed in a special
22 alternative incarceration ~~unit~~ PROGRAM, the clerk of the sen-
23 tencing court shall, within 5 working days after the placement,
24 mail to the department of corrections a certified copy of the
25 judgment of sentence and the presentence investigation report of
26 the person being placed.

1 (7) A PERSON SHALL BE PLACED IN A SPECIAL ALTERNATIVE
2 INCARCERATION PROGRAM FOR A PERIOD OF NOT MORE THAN 120 DAYS.
3 IF, DURING THAT PERIOD, THE PERSON MISSES MORE THAN 5 DAYS OF
4 PROGRAM PARTICIPATION DUE TO MEDICAL EXCUSE FOR ILLNESS OR INJURY
5 OCCURRING AFTER HE OR SHE WAS PLACED IN THE PROGRAM, THE PERIOD
6 OF PLACEMENT SHALL BE INCREASED BY THE NUMBER OF DAYS MISSED,
7 BEGINNING WITH THE SIXTH DAY OF MEDICAL EXCUSE, UP TO A MAXIMUM
8 OF 20 DAYS. A MEDICAL EXCUSE SHALL BE VERIFIED BY A PHYSICIAN'S
9 STATEMENT, A COPY OF WHICH SHALL BE PROVIDED TO THE SENTENCING
10 COURT. A PERSON WHO IS MEDICALLY UNABLE TO PARTICIPATE IN THE
11 PROGRAM FOR MORE THAN 25 DAYS SHALL BE RETURNED TO THE COURT FOR
12 SENTENCING PURSUANT TO SUBSECTION (4).

13 (8) ~~-(7)-~~ Upon receiving a satisfactory report of per-
14 formance in the program from the department of corrections, the
15 court shall authorize the release of the person from confinement
16 in the special alternative incarceration unit. ~~However, a~~
17 ~~person shall not be placed in a unit for more than 90 days.~~ The
18 receipt of an unsatisfactory report shall be grounds for revoca-
19 tion of probation as would any other violation of a condition or
20 term of probation.

21 (9) ~~-(8)-~~ A term of special alternative incarceration shall
22 be served in the manner provided in the special alternative
23 incarceration act, ACT NO. 287 OF THE PUBLIC ACTS OF 1988, BEING
24 SECTIONS 798.11 TO 798.18 OF THE MICHIGAN COMPILED LAWS.

25 (10) ~~-(9)-A~~ EXCEPT AS PROVIDED IN SUBSECTION (11), A person
26 shall not be incarcerated in a special alternative incarceration
27 unit more than once.

1 (11) IF A PERSON WAS PLACED IN A SPECIAL ALTERNATIVE
2 INCARCERATION PROGRAM BUT WAS RETURNED TO THE COURT FOR SENTENC-
3 ING BECAUSE OF A MEDICAL CONDITION EXISTING AT THE TIME OF THE
4 PLACEMENT, AND IF THE DIRECTOR OF THE SPECIAL ALTERNATIVE INCAR-
5 CERATION PROGRAM RECOMMENDS THAT THE PERSON BE ALLOWED TO RETURN
6 TO A SPECIAL ALTERNATIVE INCARCERATION PROGRAM, THE PERSON MAY BE
7 PLACED AGAIN IN A SPECIAL ALTERNATIVE INCARCERATION PROGRAM AFTER
8 THE MEDICAL CONDITION IS CORRECTED.

9 (12) ~~—(10)—~~ A person who is convicted of any of the follow-
10 ing crimes shall not be eligible for PLACEMENT IN THE special
11 alternative incarceration PROGRAM:

12 (a) Section 145c, 520b, 520c, 520d, or 520g of the Michigan
13 penal code, Act No. 328 of the Public Acts of 1931, being sec-
14 tions 750.145c, 750.520b, 750.520c, 750.520d, and 750.520g of the
15 Michigan Compiled Laws.

16 (b) Section 72, 73, or 75 of Act No. 328 of the Public Acts
17 of 1931, being sections 750.72, 750.73, and 750.75 of the
18 Michigan Compiled Laws.

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