

SENATE BILL No. 1231

April 26, 2006, Introduced by Senator SWITALSKI 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

1
2 Sec. 3b. (1) In addition to any other terms or conditions of
3 probation provided for under this chapter, the court may require
4 under a probation order that a person convicted of a crime, except
5 a crime specified in subsection (17), for which a sentence in a
6 state correctional facility may be imposed shall satisfactorily
7 complete a program of incarceration in a special alternative
8 incarceration unit, and a period of not less than 120 days of

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

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

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

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

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

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

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

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

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

1 (3) Subsection ~~—(2)(b) and (c) do—~~ **(2) (A) AND (B) DOES** not
2 prevent the department of corrections from entering into contracts
3 with counties for participation in the county jail special
4 alternative incarceration program. The county jail special
5 alternative program is a program in which convicted felons who
6 would have been sentenced to a county jail with a sentence of 6 to
7 12 months can participate.

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

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

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

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

1 department of corrections a certified copy of the judgment of
2 sentence and the presentence investigation report of the person
3 being placed.

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

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

27 (10) The order of probation under subsection (1) may authorize

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

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

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

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

1 other violation of a condition or term of probation.

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

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

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

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

16 (a) A crime described in section 145c, 520b, 520c, 520d, or
17 520g of the Michigan penal code, 1931 PA 328, MCL 750.145c,
18 750.520b, 750.520c, 750.520d, and 750.520g.

19 (b) Section 72, 73, or 75 of the Michigan penal code, 1931 PA
20 328, MCL 750.72, 750.73, and 750.75.

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