

**SENATE BILL NO. 1247**

September 15, 1998, Introduced by Senators GOUGEON and BENNETT and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," (MCL 600.101 to 600.9948) by adding sections 2967, 2968, and 2969.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1        SEC. 2967. AS USED IN THIS SECTION AND SECTIONS 2968 AND  
2 2969:

3        (A) "CIVIL ACTION WITH RESPECT TO PRISON CONDITIONS" MEANS  
4 ANY CIVIL PROCEEDING ARISING UNDER STATE LAW WITH RESPECT TO THE  
5 CONDITIONS OF CONFINEMENT OR THE EFFECTS OF ACTIONS BY GOVERNMENT  
6 OFFICIALS ON THE LIVES OF PERSONS CONFINED IN A STATE CORREC-  
7 TIONAL FACILITY, BUT DOES NOT INCLUDE HABEAS CORPUS PROCEEDINGS  
8 CHALLENGING THE FACT OR DURATION OF CONFINEMENT IN A STATE  
9 CORRECTIONAL FACILITY.

1 (B) "CONSENT DECREE" MEANS ANY RELIEF ENTERED BY THE COURT  
2 THAT IS BASED IN WHOLE OR IN PART UPON THE CONSENT OR  
3 ACQUIESCENCE OF THE PARTIES BUT DOES NOT INCLUDE PRIVATE  
4 SETTLEMENTS.

5 (C) "PRISONER" MEANS ANY PERSON INCARCERATED IN A STATE COR-  
6 RECTIONAL FACILITY UNDER THE JURISDICTION OF THE DEPARTMENT OF  
7 CORRECTIONS.

8 (D) "PRIVATE SETTLEMENT AGREEMENT" MEANS AN AGREEMENT  
9 ENTERED INTO AMONG THE PARTIES THAT IS NOT SUBJECT TO JUDICIAL  
10 ENFORCEMENT OTHER THAN THE REINSTATEMENT OF THE CIVIL PROCEEDING  
11 THAT THE AGREEMENT SETTLED.

12 (E) "PROSPECTIVE RELIEF" MEANS ALL RELIEF OTHER THAN COMPEN-  
13 SATORY MONETARY DAMAGES.

14 (F) "RELIEF" MEANS ALL RELIEF IN ANY FORM THAT MAY BE  
15 GRANTED OR APPROVED BY THE COURT, AND INCLUDES CONSENT DECREES  
16 BUT DOES NOT INCLUDE PRIVATE SETTLEMENT AGREEMENTS.

17 (G) "STATE CORRECTIONAL FACILITY" MEANS A FACILITY HOUSING A  
18 PRISONER POPULATION UNDER THE JURISDICTION OF THE DEPARTMENT OF  
19 CORRECTIONS AND INCLUDES A YOUTH CORRECTIONAL FACILITY ESTAB-  
20 LISHED UNDER SECTION 20G OF 1953 PA 232, MCL 791.220G, REGARDLESS  
21 OF WHETHER THE DEPARTMENT OF CORRECTIONS OR A PRIVATE VENDOR  
22 OPERATES THE FACILITY.

23 SEC. 2968. (1) PROSPECTIVE RELIEF IN ANY CIVIL ACTION WITH  
24 RESPECT TO PRISON CONDITIONS SHALL EXTEND NO FURTHER THAN NECES-  
25 SARY TO CORRECT THE VIOLATION OF THE RIGHTS UNDER STATE LAW. THE  
26 COURT SHALL NOT GRANT OR APPROVE ANY PROSPECTIVE RELIEF UNLESS  
27 THE COURT FINDS THAT THE RELIEF IS NARROWLY DRAWN, EXTENDS NO

1 FURTHER THAN NECESSARY TO CORRECT THE VIOLATION OF THE  
2 PLAINTIFF'S RIGHTS UNDER STATE LAW, AND IS THE LEAST INTRUSIVE  
3 MEANS NECESSARY TO CORRECT THAT VIOLATION. THE COURT SHALL GIVE  
4 SUBSTANTIAL WEIGHT TO ANY ADVERSE IMPACT ON PUBLIC SAFETY OR THE  
5 OPERATION OF A CRIMINAL JUSTICE SYSTEM CAUSED BY THE RELIEF.

6 (2) THE COURT SHALL NOT ORDER ANY PROSPECTIVE RELIEF THAT  
7 REQUIRES OR PERMITS A GOVERNMENT OFFICIAL TO EXCEED HIS OR HER  
8 AUTHORITY UNDER STATE LAW OR OTHERWISE VIOLATES STATE LAW, UNLESS  
9 BOTH OF THE FOLLOWING APPLY:

10 (A) THE RELIEF IS NECESSARY TO CORRECT THE VIOLATION OF A  
11 RIGHT UNDER STATE LAW.

12 (B) NO OTHER RELIEF WILL CORRECT THE VIOLATION OF A RIGHT  
13 UNDER STATE LAW.

14 (3) THIS SECTION DOES NOT AUTHORIZE THE COURTS, IN EXERCIS-  
15 ING THEIR REMEDIAL POWERS, TO ORDER THE CONSTRUCTION OF CORREC-  
16 TIONAL FACILITIES OR THE RAISING OF TAXES, OR TO REPEAL OR  
17 DETRACT FROM OTHERWISE APPLICABLE LIMITATIONS ON THE REMEDIAL  
18 POWERS OF THE COURTS.

19 (4) IN ANY CIVIL ACTION WITH RESPECT TO PRISON CONDITIONS,  
20 TO THE EXTENT OTHERWISE AUTHORIZED BY LAW, THE COURT MAY ENTER A  
21 TEMPORARY RESTRAINING ORDER OR AN ORDER FOR PRELIMINARY INJUNC-  
22 TIVE RELIEF. PRELIMINARY INJUNCTIVE RELIEF MUST BE NARROWLY  
23 DRAWN, EXTEND NO FURTHER THAN NECESSARY TO CORRECT THE HARM THE  
24 COURT FINDS REQUIRES PRELIMINARY RELIEF, AND BE THE LEAST INTRU-  
25 SIVE MEANS NECESSARY TO CORRECT THAT HARM. THE COURT SHALL GIVE  
26 SUBSTANTIAL WEIGHT TO ANY ADVERSE IMPACT ON PUBLIC SAFETY OR THE  
27 OPERATION OF A CRIMINAL JUSTICE SYSTEM CAUSED BY THE PRELIMINARY

1 RELIEF, IN TAILORING ANY PRELIMINARY RELIEF. PRELIMINARY  
2 INJUNCTIVE RELIEF SHALL AUTOMATICALLY EXPIRE ON THE EXPIRATION OF  
3 90 DAYS AFTER ITS ENTRY, UNLESS THE COURT MAKES THE FINDINGS  
4 REQUIRED UNDER SUBSECTION (1) FOR THE ENTRY OF PROSPECTIVE RELIEF  
5 AND MAKES THE ORDER FINAL BEFORE THE EXPIRATION OF THE 90-DAY  
6 PERIOD.

7 SEC. 2969. (1) IN ANY CIVIL ACTION WITH RESPECT TO PRISON  
8 CONDITIONS IN WHICH PROSPECTIVE RELIEF IS ORDERED, THAT RELIEF IS  
9 TERMINABLE UPON THE MOTION OF ANY PARTY OR INTERVENER ON OR AFTER  
10 1 OF THE FOLLOWING DATES, AS APPLICABLE:

11 (A) TWO YEARS AFTER THE DATE THE COURT GRANTED OR APPROVED  
12 THE PROSPECTIVE RELIEF.

13 (B) ONE YEAR AFTER THE DATE THE COURT ENTERED AN ORDER DENY-  
14 ING TERMINATION OF PROSPECTIVE RELIEF UNDER THIS SUBSECTION.

15 (C) IN THE CASE OF AN ORDER ISSUED ON OR BEFORE THE EFFEC-  
16 TIVE DATE OF THIS SECTION, 2 YEARS AFTER THAT DATE.

17 (2) THIS SECTION DOES NOT PREVENT THE PARTIES FROM AGREEING  
18 TO TERMINATE OR MODIFY RELIEF BEFORE THE RELIEF IS TERMINATED  
19 UNDER SUBSECTION (1).

20 (3) IN ANY CIVIL ACTION WITH RESPECT TO PRISON CONDITIONS, A  
21 DEFENDANT OR INTERVENER IS ENTITLED TO THE IMMEDIATE TERMINATION  
22 OF ANY PROSPECTIVE RELIEF IF THE RELIEF WAS APPROVED OR GRANTED  
23 IN THE ABSENCE OF A FINDING BY THE COURT THAT THE RELIEF IS NAR-  
24 ROWLY DRAWN, EXTENDS NO FURTHER THAN NECESSARY TO CORRECT THE  
25 VIOLATION OF THE RIGHT UNDER STATE LAW, AND IS THE LEAST INTRU-  
26 SIVE MEANS NECESSARY TO CORRECT THE VIOLATION OF THAT RIGHT.

1           (4) PROSPECTIVE RELIEF SHALL NOT TERMINATE IF THE COURT  
2 MAKES WRITTEN FINDINGS BASED ON THE RECORD THAT PROSPECTIVE  
3 RELIEF REMAINS NECESSARY TO CORRECT A CURRENT OR ONGOING VIOLA-  
4 TION OF THE RIGHT UNDER STATE LAW, EXTENDS NO FURTHER THAN NECES-  
5 SARY TO CORRECT THE VIOLATION OF THAT RIGHT, AND THAT THE PRO-  
6 SPECTIVE RELIEF IS NARROWLY DRAWN AND THE LEAST INTRUSIVE MEANS  
7 NECESSARY TO CORRECT THE VIOLATION.

8           (5) THIS SECTION DOES NOT PREVENT ANY PARTY OR INTERVENER  
9 FROM SEEKING MODIFICATION OR TERMINATION BEFORE THE RELIEF IS  
10 TERMINABLE UNDER SUBSECTIONS (1) TO (3), TO THE EXTENT THAT MODI-  
11 FICATION OR TERMINATION WOULD OTHERWISE BE LEGALLY PERMISSIBLE.

12           (6) IN ANY CIVIL ACTION WITH RESPECT TO PRISON CONDITIONS,  
13 THE COURT SHALL NOT ENTER OR APPROVE A CONSENT DECREE UNLESS IT  
14 COMPLIES WITH THE LIMITATIONS ON RELIEF SET FORTH IN SECTION  
15 2968.

16           (7) THIS SECTION DOES NOT PRECLUDE PARTIES FROM ENTERING  
17 INTO A PRIVATE SETTLEMENT AGREEMENT THAT DOES NOT COMPLY WITH THE  
18 LIMITATIONS ON RELIEF SET FORTH IN SECTION 2968, IF THE TERMS OF  
19 THAT AGREEMENT ARE NOT SUBJECT TO COURT ENFORCEMENT OTHER THAN  
20 THE REINSTATEMENT OF THE CIVIL PROCEEDING THAT THE AGREEMENT  
21 SETTLED.

22           (8) THIS SECTION DOES NOT PRECLUDE ANY PARTY CLAIMING THAT A  
23 PRIVATE SETTLEMENT AGREEMENT HAS BEEN BREACHED FROM SEEKING ANY  
24 REMEDY AVAILABLE UNDER THE LAWS OF THIS STATE.

25           (9) THE COURT SHALL PROMPTLY RULE ON ANY MOTION TO MODIFY OR  
26 TERMINATE PROSPECTIVE RELIEF IN A CIVIL ACTION WITH RESPECT TO  
27 PRISON CONDITIONS. ANY PROSPECTIVE RELIEF SUBJECT TO A PENDING

1 MOTION SHALL BE AUTOMATICALLY STAYED DURING THE APPLICABLE  
2 PERIOD, AS FOLLOWS:

3       (A) BEGINNING ON THE SIXTIETH DAY AFTER THE MOTION IS FILED,  
4 IN THE CASE OF A MOTION MADE UNDER SUBSECTION (1) OR (3); OR  
5 BEGINNING ON THE ONE HUNDRED EIGHTIETH DAY AFTER THE MOTION IS  
6 FILED IN THE CASE OF A MOTION MADE UNDER ANY OTHER LAW.

7       (B) ENDING ON THE DATE THE COURT ENTERS A FINAL ORDER RULING  
8 ON THE MOTION.