

**STATE OF MICHIGAN**  
**96TH LEGISLATURE**  
**REGULAR SESSION OF 2012**

Introduced by Senator Proos

# ENROLLED SENATE BILL No. 878

AN ACT to amend 1953 PA 232, entitled "An act to revise, consolidate, and codify the laws relating to probationers and probation officers, to pardons, reprieves, commutations, and paroles, to the administration of correctional institutions, correctional farms, and probation recovery camps, to prisoner labor and correctional industries, and to the supervision and inspection of local jails and houses of correction; to provide for the siting of correctional facilities; to create a state department of corrections, and to prescribe its powers and duties; to provide for the transfer to and vesting in said department of powers and duties vested by law in certain other state boards, commissions, and officers, and to abolish certain boards, commissions, and offices the powers and duties of which are transferred by this act; to allow for the operation of certain facilities by private entities; to prescribe the powers and duties of certain other state departments and agencies; to provide for the creation of a local lockup advisory board; to provide for a lifetime electronic monitoring program; to prescribe penalties for the violation of the provisions of this act; to make certain appropriations; to repeal certain parts of this act on specific dates; and to repeal all acts and parts of acts inconsistent with the provisions of this act," by amending sections 20i, 29, 63, 63a, 65, 65a, 69a, and 70 (MCL 791.220i, 791.229, 791.263, 791.263a, 791.265, 791.265a, 791.269a, and 791.270), section 20i as added by 2006 PA 351, section 29 as amended by 2010 PA 248, sections 63, 63a, 65, 69a, and 70 as amended by 1998 PA 512, and section 65a as amended by 1998 PA 315, and by adding section 20j.

*The People of the State of Michigan enact:*

Sec. 20i. (1) If the correctional facility described in section 20g is not utilized by the department for housing inmates or detainees under the terms of section 20g, the private contractor that operates that correctional facility may utilize the facility for housing, custody, and care of detainees or inmates from any of the following agencies, either by directly contracting with those local, state, or federal agencies or by having 1 or more local, state, or federal agencies enter into an interlocal agreement with the township or county in which the facility is located, or the county sheriff for the county in which the facility is located, who in turn may contract with the private contractor for services to be provided under the terms of the interlocal agreement, subject to the requirements of this section:

(a) Other local, state, or federal agencies.

(b) The department if the detainees or inmates are older than 19 years of age and under the jurisdiction of the department.

(2) If all contractual factors regarding potential inmates or detainees are equal, the private contractor shall give preference to the admission of inmates or detainees sent from agencies within this state, including the department.

(3) Any contract under this section for the housing, custody, and care of detainees or inmates from other local, state, or federal agencies shall require all of the following:

(a) The private contractor that operates the facility shall do all of the following:

(i) Obtain accreditation of the facility by the American correctional association within 24 months after the private contractor commences operations at the facility and maintain that accreditation throughout the term of any contract for the use of the facility.

(ii) Operate the facility in compliance with the applicable standards of the American correctional association.

(b) The personnel employed by the private contractor in the operation of the facility shall meet the employment and training requirements set forth in the applicable standards of the American correctional association, and also shall meet any higher training and employment standards that may be mandated under a contract between the private contractor and a local, state, or federal agency that sends inmates or detainees to the facility.

(c) Any serious incident that occurs at the facility shall be reported immediately to the sheriff of the county and the state police.

(4) An inmate or detainee housed at the facility shall not participate in work release, a work camp, or another similar program or activity occurring outside the secure perimeter of the facility without the authorization of the initiating jurisdiction.

(5) The facility shall allow the presence of on-site monitors from any local, state, or federal agency that sends inmates or detainees to the facility, for the purpose of monitoring the conditions of confinement of those inmates or detainees. Whenever the private contractor submits a written report to a local, state, or federal agency that sends inmates or detainees to the facility, the private contractor shall send copies of the written report to the township supervisor, the board of county commissioners, the county sheriff, and the department.

(6) Personnel employed at the facility by the private contractor who have met the employment and training requirements set forth in the applicable standards of the American correctional association have full authority to perform their duties and responsibilities under law, including, but not limited to, exercising the use of force in the same manner and to the same extent as would be authorized if those personnel were employed in a correctional facility operated by the department.

(7) A contract with a local, state, or federal agency that sends inmates or detainees to the facility shall not require, authorize, or imply a delegation of the authority or responsibility to the private contractor to do any of the following:

(a) Develop or implement procedures for calculating inmate release and parole eligibility dates or recommending the granting or denying of parole, although the private contractor may submit written reports that have been prepared in the ordinary course of business.

(b) Develop or implement procedures for calculating and awarding earned credits, including good time credits, disciplinary credits, or similar credits affecting the length of an inmate's incarceration, approving the type of work inmates may perform and the wage or earned credits, if any, that may be awarded to inmates engaging in that work, and granting, denying, or revoking earned credits.

(8) An inmate or detainee shall not be housed at the facility unless the security classification of the inmate or detainee, as it would be determined by the department if he or she were being housed in a state correctional facility, is level IV or below, and has never previously been above level IV.

(9) Inmates and detainees shall be transferred to and from the facility in a secure manner. Any inmate or detainee housed at the facility who was sent from another state, a local agency outside this state, or the federal government shall be returned to the agency that sent the inmate or detainee upon completion of the inmate's or detainee's term of incarceration in the facility and shall not be released from custody within this state.

(10) The department of corrections is not responsible for oversight of the facility. This state, or any department or agency of this state, is not civilly liable for damages arising out of the operation of the facility.

(11) As used in this section:

(a) "Facility" means the former Michigan youth correctional facility described in subsection (1).

(b) "Security classification" means 1 of 6 levels of restrictiveness enforced in housing units at each state correctional facility, as determined by the department, with security level I being the least restrictive and security level VI being the most restrictive.

(c) "Serious incident" means a disturbance at the facility involving 5 or more inmates or detainees, a death of an inmate or detainee, a felony or attempted felony committed within the facility, or an escape or attempted escape from the facility.

Sec. 20j. (1) This act does not prohibit the department from contracting with an operator of a privately owned correctional facility to house and manage inmates under the jurisdiction of the department if the contract will result in

an annual cost savings of at least 10% to the state. The department shall annually document and report the savings to the legislature.

(2) If the department contracts with a privately owned correctional facility, the contractor shall interview and consider for employment employees or former employees of the department who lose or reasonably expect to lose their position of employment with the department as a result of prison closures. The contractor shall also give consideration to the hiring of unemployed national guard and reserve officers and military personnel who are returning to this state following active deployment. This section does not create a property interest in employment.

Sec. 29. Except as otherwise provided by law, all records and reports of investigations made by a probation officer, and all case histories of probationers shall be privileged or confidential communications not open to public inspection. Judges and probation officers shall have access to the records, reports, and case histories. The probation officer, the assistant director of probation, or the assistant director's representative shall permit the attorney general, the auditor general, and law enforcement agencies to have access to the records, reports, and case histories and shall permit designated representatives of a private contractor that operates a facility or institution that houses prisoners under the jurisdiction of the department to have access to the records, reports, and case histories pertaining to prisoners assigned to that facility. The relation of confidence between the probation officer and probationer or defendant under investigation shall remain inviolate.

Sec. 63. (1) The wardens of the correctional facilities of this state shall be appointed by the director of corrections and shall be within the state civil service. The assistant director in charge of the bureau of correctional facilities shall, subject to the approval of the director, appoint personnel within the bureau as may be necessary. Members of the staff and employees of each correctional facility shall be appointed by the warden subject to the approval of the director.

(2) As used in this section, "correctional facility" does not include a correctional facility described in section 20g or 20j if that facility is operated by a private contractor.

Sec. 63a. (1) A person employed by the department of corrections in a correctional facility who is injured as a result of an assault by a prisoner housed in the correctional facility or injured during a riot shall receive his or her full wages by the department of corrections until worker's compensation benefits begin and then shall receive in addition to worker's compensation benefits a supplement from the department which together with the worker's compensation benefits shall equal but not exceed the weekly net wage of the employee at the time of the injury. This supplement shall only apply while the person is on the department's payroll and is receiving worker's compensation benefits. Fringe benefits normally received by an employee shall be in effect during the time the employee receives the supplement provided by this section from the department.

(2) Subsection (1) also applies to a person who is employed by the department of corrections who, while performing his or her duties in a correctional facility described in section 20g or 20j, is injured as a result of an assault by a prisoner housed in that correctional facility or is injured during a riot in that correctional facility. However, subsection (1) does not apply to any person employed by, or retained under contract by, a private contractor that operates a correctional facility described in section 20g or 20j.

(3) For purposes of this section, "correctional facility" means a facility that houses prisoners committed to the jurisdiction of the department, including a community corrections center.

Sec. 65. (1) Under rules promulgated by the director of the department, the assistant director in charge of the bureau of correctional facilities, except as otherwise provided in this section, may cause the transfer or re-transfer of a prisoner from a correctional facility to which committed to any other correctional facility, or temporarily to a state institution for medical or surgical treatment. In effecting a transfer, the assistant director of the bureau of correctional facilities may utilize the services of an executive or employee within the department and of a law enforcement officer of the state.

(2) A prisoner who is subject to disciplinary time and is committed to the jurisdiction of the department shall be confined in a secure correctional facility for the duration of his or her minimum sentence, except for periods when the prisoner is away from the secure correctional facility while being supervised by an employee of the department or by an employee of a private contractor that operates a facility or institution that houses prisoners under the jurisdiction of the department for 1 of the following purposes:

- (a) Visiting a critically ill relative.
- (b) Attending the funeral of a relative.
- (c) Obtaining medical services not otherwise available at the secure correctional facility.
- (d) Participating in a work detail.

(3) As used in this section, "offender" means a citizen of the United States or a foreign country who has been convicted of a crime and been given a sentence in a country other than the country of which he or she is a citizen. If a treaty is in effect between the United States and a foreign country, which provides for the transfer of offenders from

the jurisdiction of 1 of the countries to the jurisdiction of the country of which the offender is a citizen, and if the offender requests the transfer, the governor of this state or a person designated by the governor may give the approval of this state to a transfer of an offender, if the conditions of the treaty are satisfied.

(4) Not less than 45 days before approval of a transfer pursuant to subsection (3) from this state to another country, the governor, or the governor's designee, shall notify the sentencing judge and the prosecuting attorney of the county having original jurisdiction, or their successors in office, of the request for transfer. The notification shall indicate any name changes of the offender subsequent to sentencing. Within 20 days after receiving such notification, the judge or prosecutor may send to the governor, or the governor's designee, information about the criminal action against the offender or objections to the transfer. Objections to the transfer shall not preclude approval of the transfer.

(5) As used in this section, "secure correctional facility" means a facility that houses prisoners under the jurisdiction of the department according to the following requirements:

(a) The facility is enclosed by a locked fence or wall that is designed to prevent prisoners from leaving the enclosed premises and that is patrolled by correctional officers.

(b) Prisoners in the facility are restricted to the area inside the fence or wall.

(c) Prisoners are under guard by correctional officers 7 days per week, 24 hours per day.

Sec. 65a. (1) Under prescribed conditions, the director may extend the limits of confinement of a prisoner when there is reasonable assurance, after consideration of all facts and circumstances, that the prisoner will not become a menace to society or to the public safety, by authorizing the prisoner to do any of the following:

(a) Visit a specifically designated place or places. An extension of limits may be granted only to a prisoner housed in a state correctional facility to permit a visit to a critically ill relative, attendance at the funeral of a relative, or contacting prospective employers. The maximum amount of time a prisoner is eligible for an extension of the limits of confinement under this subdivision shall not exceed a cumulative total period of 30 days.

(b) Obtain medical services not otherwise available to a prisoner housed in a state correctional facility.

(c) Work at paid employment, participate in a training or educational program, or participate in a community residential drug treatment program while continuing as a prisoner housed on a voluntary basis at a community corrections center or in a community residential home.

(2) The director shall promulgate rules to implement this section.

(3) The willful failure of a prisoner to remain within the extended limits of his or her confinement or to return within the time prescribed to an institution or facility designated by the director shall be considered an escape from custody as provided in section 193 of the Michigan penal code, 1931 PA 328, MCL 750.193.

(4) Subject to subsection (8), a prisoner, other than a prisoner subject to disciplinary time, who is convicted of a crime of violence or any assaultive crime is not eligible for the extensions of the limits of confinement provided in subsection (1) until the minimum sentence imposed for the crime has less than 180 days remaining.

(5) Subject to subsection (8), a prisoner subject to disciplinary time is not eligible for the extensions of the limits of confinement provided in subsection (1) until he or she has served the minimum sentence imposed for the crime.

(6) However, notwithstanding subsections (4) or (5), if the reason for the extension is to visit a critically ill relative, attend the funeral of a relative, or obtain medical services not otherwise available, the director may allow the extension under escort as provided in subsection (1).

(7) A prisoner serving a sentence for murder in the first degree is not eligible for the extensions of confinement under this section until a parole release date is established by the parole board and in no case before serving 15 calendar years with a good institutional adjustment.

(8) A prisoner who is convicted of a crime of violence or any assaultive crime, and whose minimum sentence imposed for the crime is 10 years or more, shall not be placed in a community residential home during any portion of his or her sentence.

(9) As used in this section:

(a) "Community corrections center" means a facility either contracted for or operated by the department in which a security staff is on duty 7 days per week, 24 hours per day.

(b) "Community residential home" means a location where electronic monitoring of prisoner presence is provided by the department 7 days per week, 24 hours per day, except that the department may waive the requirement that electronic monitoring be provided as to any prisoner who is within 3 months of his or her parole date.

(c) "State correctional facility" means a facility or institution that houses a prisoner population under the jurisdiction of the department. State correctional facility does not include a community corrections center or community residential home.

Sec. 69a. (1) A visitor to a state correctional facility shall not be subjected to a pat down search unless every person performing or assisting in performing the pat down search is of the same sex as the person being searched. If the necessary personnel are not readily available, a visitor at his or her option may waive the provisions of this subsection by signing a waiver provided by the department of corrections.

(2) As used in this section:

(a) "Pat down search" means a search of a person in which the person conducting the search touches the body or clothing, or both, of the person being searched to detect the presence of concealed objects.

(b) "State correctional facility" means a facility or institution that houses prisoners under the jurisdiction of the department.

Sec. 70. (1) A correctional facility may monitor telephone communications over telephones available for use by prisoners in the correctional facility if all of the following conditions are met:

(a) The director promulgates rules under which the monitoring is to be conducted, and the monitoring is conducted in accordance with those rules. The rules shall include provisions for minimizing the intrusiveness of the monitoring and shall prescribe a procedure by which a prisoner may make telephone calls to his or her attorney, and any federal, state, or local public official if requested by that public official, that are not monitored.

(b) The monitoring is routinely conducted for the purpose of preserving the security and orderly management of the correctional facility, interdicting drugs and other contraband, and protecting the public, and is performed by employees of the department or, in the case of a correctional facility operated by a private contractor under section 20g or 20j, is conducted by employees of the private contractor.

(c) Notices are prominently posted on or near each telephone subject to monitoring informing users of the telephone that communications over the telephone may be monitored.

(d) In addition to the posting of notices under subdivision (c), the prisoners in the correctional facility are given reasonable notice of the rules promulgated under subdivision (a).

(e) Each party to the conversation is notified by voice that the conversation is being monitored.

(2) A correctional facility shall disclose information obtained under this section regarding a crime or attempted crime to any law enforcement agency having jurisdiction over that crime or attempted crime.

(3) Evidence obtained under this section regarding a crime or attempted crime may be considered as evidence in a criminal prosecution for that crime or attempted crime.

(4) As used in this section:

(a) "Correctional facility" includes a correctional facility operated under section 20g or 20j by the department or a private contractor.

(b) "Monitor" means to listen to or record, or both.

*Carol Morey Viventi*

Secretary of the Senate

*Jay E. Randall*

Clerk of the House of Representatives

Approved .....

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Governor