

## PRIVATELY OPERATED PRISONS

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**House Bills 6169 and 6170 as reported from committee**

**Sponsor: Rep. Scott VanSingel**

**Committee: Judiciary**

**Complete to 9-23-20**

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

House Bills 6169 and 6170 would amend different acts to apply certain provisions regarding trespassing and the possession by inmates of prohibited items to a privately operated correctional facility and prisoners detained in such a facility and to revise certain definitions to include those privately operated facilities.

The North Lake Correctional Facility near Baldwin (formerly the Michigan Youth Correctional Facility) is a private, for-profit prison operated by the GEO Group, Inc., under a federal contract to house immigrant detainees. The bills would change several provisions in Michigan law to apply to the North Lake facility and its prisoners.

**House Bill 6169** would amend section 552b of the Michigan Penal Code, which prohibits trespassing on the property of a *state correctional facility* and provides that a person who willfully violates the prohibition is guilty of a felony punishable by imprisonment for up to four years or a fine of up to \$2,000, or both.

The bill would revise the definition of *state correctional facility* to include a facility or institution that is operated by a private contractor under section 20i of the Corrections Code for the housing, custody, and care of detainees or inmates from a federal agency.

The bill is tie-barred to HB 6170, which means that it cannot take effect unless HB 6170 is also enacted into law.

MCL 750.552b

**House Bill 6170** would amend 1909 PA 17, which prohibits or limits access by prisoners and corrections employees to certain items, such as alcohol, drugs, and certain weapons and wireless communication devices. The bill would amend the following defined terms:

*Correctional facility* would be revised to include a facility operated by a private contractor under section 20i of the Corrections Code for the housing, custody, and care of detainees or inmates from a federal agency.

*Chief administrator* would be revised to include the facility administrator of a correctional facility operated by a private contractor, in addition to the warden, superintendent, or Department of Corrections (DOC)-appointed chief administrative officer of a correctional facility.

*Prisoner* would be revised to include an individual detained by and under the custody of a federal agency and housed in a correctional facility operated by a private contractor.

These definitional changes would make facilities operated by a private contractor, employees of those facilities, and prisoners housed in those facilities subject to the provisions of the act. Generally speaking, with specified exceptions, the act prohibits prisoners from possessing liquor, prescription drugs, poison, controlled substances, or weapons or other implements that could be dangerous or assist an escape. It also prohibits others from providing those items to a prisoner or bringing them into a correctional facility.

The act also currently prohibits a prisoner from possessing or using a cell phone or other wireless communications device in a correctional facility or on the grounds except as authorized by the DOC. The bill would apply the prohibition also to use by a prisoner in or on the grounds of a facility operated by a private contractor except as authorized by the chief administrator of that correctional facility.

A violation of the act is a felony punishable by imprisonment for up to five years or a fine of up to \$1,000, or both.

MCL 800.281a and 800.283a

#### **BRIEF DISCUSSION:**

Contraband in the hands of prisoners, whether alcohol, drugs, or weapons, creates safety issues for prison staff and prisoners alike. Cellphones can be used to intimidate witnesses, plan escapes, and orchestrate criminal activity on the outside. Many prisons report problems with drones and other contraptions being used to deliver contraband over prison walls. Currently, state law makes trespassing on prison grounds or furnishing contraband to a prisoner a felony, but the laws apply only to prisons under the jurisdiction of the state Department of Corrections. Trespassing on the grounds of the state's only privately owned prison falls under the state's general trespassing law, violation of which is a misdemeanor punishable by up to 30 days in jail or a fine of up to \$250.

With such a minor penalty, there is little local law enforcement can do to effectively deter people from trespassing on the prison's grounds or trying to get contraband over its walls. Reportedly, federal law enforcement agencies are not prosecuting these cases. Further, because a national fingerprint search is not conducted on misdemeanor offenses with a maximum term of imprisonment of 92 days or less, it can be difficult to accurately identify out-of-state offenders or locate them if they fail to pay fines or show for court dates.

Due to the danger presented by trespassing to pass contraband to prisoners, it has been suggested that the laws that apply to Michigan prisons be expanded to apply also to the private prison. Doing so would give Michigan police, prosecutors, and the courts more appropriate penalties with which to prosecute violations if federal law enforcement agencies did not prosecute a case.

#### **FISCAL IMPACT:**

The bills would have an indeterminate fiscal impact on the state and on local units of government. Under provisions of [HB 6169](#), a person who trespasses by entering or remaining on the property of a correctional facility operated by a private contractor, without authority or permission, would be guilty of a felony punishable by imprisonment for up to four years or a

fine of up to \$2,000 or both. HB 6170 would amend 1909 PA 17, which generally prohibits or limits the presence of liquor, narcotics, and weapons in state prisons, to include correctional facilities operated by private contractors and prisoners housed in correctional facilities operated by private contractors. Violation of 1909 PA 17 is a felony punishable by imprisonment for up to five years or a fine of up to \$1,000, or both.

The number of persons who would be convicted under provisions of either bill is not known. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2019, the average cost of prison incarceration in a state facility was roughly \$39,400 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,800 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.