



SENATE BILL No. 273

January 28, 1993, Introduced by Senators BOUCHARD and WELBORN and referred to the Committee on Family Law, Criminal Law, and Corrections.

A bill to amend the title and sections 15, 62, 63, and 65a of Act No. 232 of the Public Acts of 1953, entitled as amended

"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 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 hereby transferred; 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 prescribe penalties for the violation of the provisions of this act; 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,"

section 15 as added by Act No. 303 of the Public Acts of 1980, section 62 as amended by Act No. 251 of the Public Acts of 1987, and section 65a as amended by Act No. 272 of the Public Acts of

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1 Section 1. The title and sections 15, 62, 63, and 65a of
2 Act No. 232 of the Public Acts of 1953, section 15 as added by
3 Act No. 303 of the Public Acts of 1980, section 62 as amended by
4 Act No. 251 of the Public Acts of 1987, and section 65a as
5 amended by Act No. 272 of the Public Acts of 1988, being sections
6 791.215, 791.262, 791.263, and 791.265a of the Michigan Compiled
7 Laws, are amended and sections 62d, 62e, 62f, 62g, 62h, and 62i
8 are added to read as follows:

10 An act to revise, consolidate, and codify the laws relating
11 to probationers and probation officers, to pardons, reprieves,
12 commutations, and paroles, to the administration of correctional
13 institutions, correctional farms, and probation recovery camps,
14 to prisoner labor and correctional industries, and TO the super-
15 vision and inspection of local jails and houses of correction; to
16 provide for the siting of correctional facilities; to create a
17 state department of corrections, and to prescribe its powers and
18 duties; to provide for the transfer to and vesting in said
19 department of powers and duties vested by law in certain other
20 state boards, commissions, and officers, and to abolish certain
21 boards, commissions, and offices the powers and duties of which
22 are hereby transferred; TO ALLOW FOR THE OPERATION OF CERTAIN
23 CORRECTIONAL FACILITIES BY PRIVATE ENTITIES OR LOCAL GOVERNMENTAL

1 ENTITIES UNDER CERTAIN CONDITIONS; to prescribe the powers and
 2 duties of certain other state departments and agencies; to pro-
 3 vide for the creation of a local lockup advisory board; to pre-
 4 scribe penalties for the violation of the provisions of this act;
 5 to repeal certain parts of this act on specific dates; and to
 6 repeal all acts and parts of acts inconsistent with the provi-
 7 sions of this act.

8 Sec. 15. As used in ~~this act~~ SECTIONS 15 TO 19,
 9 "correctional facility" means a facility or institution ~~which~~
 10 THAT HOUSES STATE PRISONERS AND THAT is EITHER maintained and
 11 operated by the department OR IS MAINTAINED AND OPERATED BY A
 12 COUNTY OR A PRIVATE VENDOR PURSUANT TO SECTION 62D.

13 Sec. 62. (1) As used in this section:

14 (a) "Holding cell" means a cell or room in a facility of a
 15 local unit of government that is used for the detention FOR NOT
 16 MORE THAN 12 HOURS of 1 or more persons WHO ARE awaiting process-
 17 ing, booking, court appearances, transportation to a jail or
 18 lockup, or discharge. ~~for not to exceed 12 hours.~~

19 (b) "Holding center" means a facility that is operated by a
 20 local unit of government for the detention FOR NOT MORE THAN 24
 21 HOURS of persons WHO ARE awaiting processing, booking, court
 22 appearances, transportation to a jail or lockup, or discharge.
 23 ~~for not to exceed 24 hours.~~

24 (c) "Jail" means a facility that is operated by a local unit
 25 of government for the detention FOR NOT MORE THAN 1 YEAR of per-
 26 sons WHO ARE charged with, or convicted of, criminal offenses or
 27 ordinance violations ~~persons~~ OR ARE found guilty of civil or

1 criminal contempt. ~~or a facility which houses prisoners~~
2 ~~pursuant to an agreement authorized under Act No. 164 of the~~
3 ~~Public Acts of 1861, being sections 802.1 to 802.21 of the~~
4 ~~Michigan Compiled Laws, for not more than 1 year.~~

5 (d) "Local unit of government" means any county, city, vil-
6 lage, township, charter township, community college, college, or
7 university.

8 (e) "Lockup" means a facility that is operated by a local
9 unit of government for the detention FOR NOT MORE THAN 72 HOURS
10 of persons WHO ARE awaiting processing, booking, court appear-
11 ances, or transportation to a jail. ~~for not to exceed 72~~
12 ~~hours.~~

13 (f) "State correctional facility" means a facility ~~or~~
14 ~~institution~~ THAT HOUSES STATE PRISONERS, WHETHER maintained and
15 operated by the department OR MAINTAINED AND OPERATED BY A PRI-
16 VATE VENDOR OR COUNTY PURSUANT TO SECTION 62D.

17 (2) State correctional facilities shall be administered by
18 the ~~bureau of prisons~~ DEPARTMENT OF CORRECTIONS OR, IN THE CASE
19 OF A FACILITY OPERATED PURSUANT TO SECTION 62D, BY THE PRIVATE
20 VENDOR OR COUNTY DESIGNATED IN THE PERTINENT CONTRACT.

21 (3) The department shall supervise and inspect jails and
22 lockups that are under the jurisdiction of the county sheriff to
23 obtain facts concerning the proper management of the jails and
24 lockups and their usefulness. The department shall promulgate
25 rules and standards promoting the proper, efficient, and humane
26 administration of jails and lockups that are under the
27 jurisdiction of the county sheriff pursuant to the administrative

1 procedures act of 1969, Act No. 306 of the Public Acts of 1969,
2 being sections 24.201 to ~~24.315~~ 24.328 of the Michigan Compiled
3 Laws.

4 (4) The department may grant a variance to the rules and
5 standards promulgated under subsection (3).

6 (5) Except as provided in subsection (3), the department
7 shall not supervise and inspect, or promulgate rules and stan-
8 dards for the administration of, holding cells, holding centers,
9 or lockups. However, the department shall provide advice and
10 services concerning the efficient and humane administration of
11 holding cells, holding centers, and lockups at the request of a
12 local unit of government.

13 (6) The commission may enforce any reasonable order with
14 respect to jails and lockups subject to supervision and inspec-
15 tion pursuant to subsection (3) through mandamus or injunction in
16 the circuit court of the county where the jail is located through
17 proceedings instituted by the attorney general on behalf of the
18 commission.

19 (7) The county board of commissioners may determine whether
20 the sheriff's residence is to be part of the county jail.

21 (8) The sheriff or the administrator of a jail or lockup,
22 subject to supervision and inspection under subsection (3), shall
23 admit to the jail or lockup any member of the commission or an
24 authorized designee of the commission, for the purpose of visita-
25 tion and inspection.

26 (9) The sheriff or the administrator of a jail or lockup
27 subject to supervision and inspection under subsection (3) shall

1 keep records of a type and in a manner reasonably prescribed by
2 the commission. The commission shall provide the forms required
3 for keeping the records.

4 (10) Any person who violates ~~subsections~~ SUBSECTION (8) or
5 (9) ~~shall be~~ IS guilty of a misdemeanor.

6 SEC. 62D. (1) THE DEPARTMENT MAY CONTRACT WITH PRIVATE VEN-
7 DORS OR WITH COUNTIES FOR THE FINANCING, CONSTRUCTION, OPERATION,
8 MAINTENANCE, OR MANAGEMENT OF SECURE CORRECTIONAL FACILITIES.

9 (2) A FACILITY OPERATED, MAINTAINED, AND MANAGED BY A PRI-
10 VATE VENDOR OR COUNTY SHALL COMPLY WITH FEDERAL CONSTITUTIONAL
11 STANDARDS AND APPLICABLE COURT ORDERS, AND SHALL RECEIVE AND
12 RETAIN, AS AN INDIVIDUAL FACILITY, ACCREDITATION FROM THE
13 AMERICAN CORRECTIONAL ASSOCIATION.

14 (3) A FACILITY OPERATED UNDER THIS SECTION MAY BE LOCATED ON
15 PRIVATE LAND OR ON LAND OWNED BY THE STATE OR A LOCAL UNIT OF
16 GOVERNMENT. THE DEPARTMENT MAY ACCEPT LAND DONATED FOR THAT
17 PURPOSE.

18 SEC. 62E. THE DEPARTMENT MAY CONFINED ONLY MINIMUM OR MEDIUM
19 SECURITY INMATES IN A FACILITY OPERATED UNDER SECTION 62D, AND
20 THOSE INMATES REMAIN IN THE LEGAL CUSTODY OF THE DEPARTMENT.

21 SEC. 62F. (1) THE DEPARTMENT SHALL NOT AWARD A CONTRACT FOR
22 A FACILITY OPERATED UNDER SECTION 62D UNLESS THE DEPARTMENT
23 REQUESTS PROPOSALS AND RECEIVES A PROPOSAL THAT MEETS OR EXCEEDS
24 THE REQUIREMENTS OF THIS SECTION.

25 (2) A PARTY PROPOSING TO ENTER A CONTRACT WITH THE DEPART-
26 MENT UNDER SECTION 62D SHALL DEMONSTRATE THE QUALIFICATIONS AND
27 THE OPERATIONS AND MANAGEMENT EXPERIENCE TO CARRY OUT THE TERMS

1 OF THE CONTRACT, AND THE ABILITY TO COMPLY WITH THE STANDARDS OF
2 THE AMERICAN CORRECTIONAL ASSOCIATION AND WITH SPECIFIC COURT
3 ORDERS.

4 (3) A PROPOSAL IS NOT ACCEPTABLE UNLESS IT DOES AT LEAST ALL
5 OF THE FOLLOWING:

6 (A) PROVIDES FOR REGULAR, ON-SITE MONITORING BY THE
7 DEPARTMENT.

8 (B) ACKNOWLEDGES THAT PAYMENT BY THE STATE IS SUBJECT TO THE
9 AVAILABILITY OF APPROPRIATIONS FOR THAT PURPOSE.

10 (C) PROVIDES FOR A MAXIMUM AMOUNT OF PAYMENT PER 2-YEAR
11 PERIOD.

12 (D) OFFERS A LEVEL AND QUALITY OF PROGRAMS AT LEAST EQUAL TO
13 THOSE PROVIDED BY STATE OPERATED FACILITIES THAT HOUSE SIMILAR
14 TYPES OF INMATES, AT A COST THAT PROVIDES THE STATE WITH A SAV-
15 INGS OF NOT LESS THAN 10% OF THE COST OF HOUSING SIMILAR TYPES OF
16 INMATES, WITH SIMILAR PROGRAMS, IN STATE OPERATED FACILITIES.

17 (E) PERMITS THE STATE TO TERMINATE THE CONTRACT FOR CAUSE,
18 INCLUDING, BUT NOT LIMITED TO, THE FAILURE OF THE PRIVATE VENDOR
19 OR COUNTY TO MEET THE CONDITIONS REQUIRED BY THIS SECTION.

20 (F) PROVIDES THAT COST ADJUSTMENTS MAY BE MADE ONLY ONCE
21 EACH 2-YEAR PERIOD, AND, IF MADE, SHALL TAKE EFFECT AT THE BEGIN-
22 NING OF THE NEXT 2-YEAR PERIOD.

23 (G) IS FOR AN INITIAL CONTRACT TERM OF NOT MORE THAN 3
24 YEARS, WITH AN OPTION TO RENEW FOR ADDITIONAL PERIODS OF 2 YEARS
25 EACH.

26 (H) IF THE PROPOSAL INCLUDES CONSTRUCTION OF A FACILITY,
27 CONTAINS A PERFORMANCE BOND APPROVED BY THE DEPARTMENT OF

1 CORRECTIONS THAT IS ADEQUATE AND APPROPRIATE FOR THE PROPOSED
2 CONTRACT.

3 (I) PROVIDES FOR ASSUMPTION OF LIABILITY BY THE PRIVATE
4 VENDOR OR COUNTY FOR ALL CLAIMS ARISING FROM THE SERVICES PER-
5 FORMED UNDER THE CONTRACT BY THE PRIVATE VENDOR OR COUNTY.

6 (J) PROVIDES FOR AN ADEQUATE PLAN OF INSURANCE FOR THE PRI-
7 VATE VENDOR OR COUNTY AND ITS OFFICERS, GUARDS, EMPLOYEES, AND
8 AGENTS AGAINST ALL CLAIMS, INCLUDING CLAIMS BASED ON VIOLATIONS
9 OF CIVIL RIGHTS, ARISING FROM THE SERVICES PERFORMED UNDER THE
10 CONTRACT BY THE PRIVATE VENDOR OR COUNTY.

11 (K) PROVIDES FOR AN ADEQUATE PLAN OF INSURANCE TO PROTECT
12 THE STATE AGAINST ALL CLAIMS ARISING FROM THE SERVICES PERFORMED
13 UNDER THE CONTRACT BY THE PRIVATE VENDOR OR COUNTY AND TO PROTECT
14 THE STATE FROM ACTIONS BY A THIRD PARTY AGAINST THE PRIVATE
15 VENDOR OR COUNTY, ITS OFFICERS, GUARDS, EMPLOYEES, OR AGENTS AS A
16 RESULT OF THE CONTRACT.

17 (L) PROVIDES PLANS FOR THE PURCHASE AND ASSUMPTION OF OPERA-
18 TIONS BY THE STATE IN THE EVENT OF THE BANKRUPTCY OF THE PRIVATE
19 VENDOR OR INABILITY OF THE COUNTY TO PERFORM ITS DUTIES UNDER THE
20 CONTRACT.

21 (M) CONTAINS COMPREHENSIVE STANDARDS FOR CONDITIONS OF
22 CONFINEMENT.

23 (4) BEFORE A COUNTY BOARD OF COMMISSIONERS PROPOSES TO ENTER
24 INTO A CONTRACT UNDER SECTION 62D, THE COUNTY BOARD OF COMMIS-
25 SIONERS SHALL HAVE RECEIVED THE WRITTEN APPROVAL OF THE SHERIFF
26 OF THE COUNTY. A CORRECTIONAL FACILITY OPERATED BY A COUNTY
27 UNDER SECTION 62D IS SUBJECT TO THE SAME STANDARDS AND

1 REQUIREMENTS AS A CORRECTIONAL FACILITY OPERATED BY A PRIVATE
2 VENDOR UNDER SECTION 62D.

3 (5) A PRIVATE VENDOR OR COUNTY OPERATING UNDER A CONTRACT
4 UNDER SECTION 62D SHALL NOT DO ANY OF THE FOLLOWING, UNLESS SPE-
5 CIFICALLY DIRECTED TO DO SO BY THE DEPARTMENT:

6 (A) CALCULATE INMATE RELEASE AND PAROLE ELIGIBILITY DATES.

7 (B) AWARD GOOD TIME OR DISCIPLINARY CREDITS.

8 (C) APPROVE INMATES FOR EXTENSIONS OF CONFINEMENT.

9 (D) CLASSIFY INMATES OR PLACE INMATES IN LESS RESTRICTIVE
10 CUSTODY.

11 (6) IN DETERMINING COSTS AND COST SAVINGS UNDER
12 SUBSECTION (3) (D), THE DEPARTMENT MAY CONSIDER ANY FACTOR IT
13 DETERMINES IS RELEVANT, INCLUDING ADDITIONAL COSTS TO THE STATE
14 FOR PROVIDING THE SAME SERVICE AS A PRIVATE VENDOR OR COUNTY,
15 INDIRECT COSTS PROPERLY ALLOCABLE TO EITHER THE STATE OR THE PRI-
16 VATE VENDOR OR COUNTY, AND CONTINUING COSTS TO THE STATE DIRECTLY
17 ASSOCIATED WITH THE CONTRACT.

18 SEC. 62G. THIS SECTION DOES NOT CONFER ON A PERSON OPERAT-
19 ING UNDER A CONTRACT UNDER SECTION 62D A CLAIM OF GOVERNMENTAL
20 IMMUNITY IN AN ACTION ARISING FROM THE SERVICES PERFORMED UNDER
21 THE CONTRACT BY THE PRIVATE VENDOR OR COUNTY. THIS SECTION DOES
22 NOT DEPRIVE THE PRIVATE VENDOR, THE COUNTY, OR THE STATE OF THE
23 BENEFIT OF ANY LAW LIMITING EXPOSURE TO LIABILITY, SETTING A
24 LIMIT ON DAMAGES, OR ESTABLISHING DEFENSES TO LIABILITY.

25 SEC. 62H. THE DEPARTMENT MAY CONVERT A FACILITY INTO A COR-
26 RECTIONAL FACILITY OPERATED BY A PRIVATE VENDOR OR BY A COUNTY
27 ONLY IF CONSTRUCTION OF THE FACILITY WAS COMPLETED AFTER

1 JANUARY 1, 1991, AND THE FACILITY WAS NOT OPERATED AS A
2 CORRECTIONAL FACILITY BEFORE THE EFFECTIVE DATE OF THIS SECTION.

3 SEC. 62I. (1) THE DEPARTMENT SHALL IMPLEMENT SECTIONS 62D
4 TO 62H FIRST AS A PILOT PROGRAM INVOLVING NOT MORE THAN 2
5 FACILITIES. TWO YEARS AFTER THE DATE ON WHICH THE FIRST FACILITY
6 OPERATED PURSUANT TO SECTIONS 62D TO 62H IS OPENED FOR OCCUPANCY,
7 THE DEPARTMENT SHALL REPORT TO THE LEGISLATURE ON ALL ASPECTS OF
8 THE PILOT PROJECT. THE REPORT SHALL INCLUDE THE COST SAVINGS, IF
9 ANY, RESULTING FROM THE PRIVATE OR LOCAL OPERATION OF THE FACIL-
10 ITY OR FACILITIES. COPIES OF THE REPORT SHALL BE DELIVERED TO
11 THE SECRETARY OF THE SENATE AND TO THE SPEAKER OF THE HOUSE OF
12 REPRESENTATIVES, AND TO THE CHAIRPERSONS OF THE HOUSE AND SENATE
13 STANDING COMMITTEES RESPONSIBLE FOR LEGISLATION CONCERNING
14 CORRECTIONS.

15 (2) THE DEPARTMENT SHALL NOT ENTER INTO CONTRACTS UNDER SEC-
16 TION 62D OTHER THAN THOSE ENTERED INTO PURSUANT TO THE PILOT PRO-
17 GRAM UNTIL 1 YEAR AFTER THE DATE ON WHICH THE REPORT REQUIRED
18 UNDER THIS SECTION IS DELIVERED TO THE LEGISLATURE.

19 Sec. 63. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), THE
20 PERSON CHIEFLY RESPONSIBLE FOR THE OPERATION OF A STATE CORREC-
21 TIONAL FACILITY IS THE WARDEN. The ~~wardens of the several penal~~
22 ~~institutions of this state~~ WARDEN OF A CORRECTIONAL FACILITY
23 shall be appointed by the director of corrections and ~~such~~
24 ~~wardens~~ shall be within the state civil service. The assistant
25 director in charge of ~~the bureau of penal institutions~~
26 CORRECTIONAL FACILITIES shall, subject to the approval of the
27 director, appoint such personnel within the bureau as may be

1 necessary, ~~it is provided, that~~ EXCEPT THAT members of the staff
2 and employees of each ~~penal institution in this state~~
3 CORRECTIONAL FACILITY shall be appointed by the warden subject to
4 the approval of the director.

5 (2) IN THE CASE OF A STATE CORRECTIONAL FACILITY OPERATED BY
6 A COUNTY OR A PRIVATE VENDOR UNDER SECTION 62D, THE CONTRACT
7 ENTERED INTO BY THE DEPARTMENT SHALL PROVIDE FOR THE MANNER OF
8 DESIGNATING A PERSON WHO IS CHIEFLY RESPONSIBLE FOR THE OPERATION
9 OF THAT CORRECTIONAL FACILITY, AND FOR THE APPOINTMENT OF STAFF
10 AND EMPLOYEES FOR THAT CORRECTIONAL FACILITY.

11 Sec. 65a. (1) Under prescribed conditions, the director may
12 extend the limits of confinement of a prisoner ~~—~~ when there is
13 reasonable assurance, after consideration of all facts and cir-
14 cumstances, that the prisoner will not become a menace to society
15 or to the public safety, by authorizing the prisoner to do any of
16 the following:

17 (a) Visit a specifically designated place or places. An
18 extension of limits may be granted only to a prisoner housed in a
19 state correctional facility to permit a visit to a critically ill
20 relative, attendance at the funeral of a relative, or ~~the~~ con-
21 tacting ~~of~~ prospective employers. The maximum amount of time a
22 prisoner is eligible for an extension of the limits of confine-
23 ment under this subdivision shall not exceed a cumulative total
24 period of 30 days. ~~On or before December 31, 1989, the depart-~~
25 ~~ment shall report to the standing committee of the senate and~~
26 ~~house of representatives having jurisdiction over corrections the~~
27 ~~number of prisoners who are under this subdivision, the amount of~~

1 ~~time each prisoner is released, and any major misconducts or~~
2 ~~crimes committed by a prisoner released under this subparagraph~~
3 ~~between December 1, 1988 and December 1, 1989.~~

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

6 (c) Work at paid employment, participate in a training or
7 educational program, or participate in a community residential
8 drug treatment program while continuing as a prisoner housed on a
9 voluntary basis at a community corrections center or in a commu-
10 nity residential home.

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

13 (3) The willful failure of a prisoner to remain within the
14 extended limits of his or her confinement or to return within the
15 time prescribed to an institution or facility designated by the
16 director shall be ~~deemed~~ CONSIDERED an escape from custody as
17 provided in section 193 of the Michigan penal code, Act No. 328
18 of the Public Acts of 1931, as amended, being section 750.193 of
19 the Michigan Compiled Laws.

20 (4) ~~Prisoners~~ A PRISONER convicted of a crime of violence
21 or any assaultive crime ~~shall~~ IS not ~~be~~ eligible for the
22 extensions of the limits of confinement provided in subsection
23 (1) until ~~such time as~~ the minimum sentence imposed for the
24 crime has less than 180 days remaining, except that if the reason
25 for the extension is to visit a critically ill relative, attend
26 the funeral of a relative, or obtain medical services not

1 otherwise available, the director may allow the extension under
2 escort as provided in subsection (1).

3 (5) ~~Prisoners~~ A PRISONER serving a sentence for murder in
4 the first degree ~~shall~~ IS not ~~be~~ eligible for the extensions
5 of confinement under this section until a parole release date is
6 established by the parole board and in no case ~~prior to service~~
7 ~~of~~ BEFORE SERVING 15 calendar years with a good institutional
8 adjustment.

9 (6) As used in this section:

10 (a) "Community corrections center" means a facility either
11 contracted for or operated by the department in which a security
12 staff is on duty 7 days per week, 24 hours per day. ~~except that~~
13 ~~the department may waive the requirement that electronic monitor-~~
14 ~~ing be provided as to any prisoner who is within 3 months of his~~
15 ~~or her parole date.~~

16 (b) "Community residential home" means a facility where
17 electronic monitoring of prisoner presence is provided by the
18 department 7 days per week, 24 hours per day EXCEPT THAT THE
19 DEPARTMENT MAY WAIVE THE REQUIREMENT THAT ELECTRONIC MONITORING
20 BE PROVIDED AS TO ANY PRISONER WHO IS WITHIN 3 MONTHS OF HIS OR
21 HER PAROLE DATE.

22 (c) "State correctional facility" means a facility THAT
23 HOUSES STATE PRISONERS AND IS EITHER owned or leased by the
24 department OR IS OPERATED BY A COUNTY OR A PRIVATE VENDOR PURSU-
25 ANT TO SECTION 62D. State correctional facility does not include
26 a community corrections center or community residential home.