

SENATE BILL NO. 1222

June 25, 1998, Introduced by Senator CISKY and referred to the Committee on Families, Mental Health and Human Services.

A bill 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 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 20g, 29, 34, 63, 63a, 65, 69a, and 70 (MCL 791.220g, 791.229, 791.234, 791.263, 791.263a, 791.265, 791.269a, and 791.270), section 20g as added by 1996 PA 164, section 34 as

amended by 1994 PA 345, section 65 as amended by 1994 PA 217, section 69a as added by 1990 PA 42, and section 70 as added by 1993 PA 255.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20g. (1) The department may establish a youth correc-
2 tional facility which shall house only prisoners committed to the
3 jurisdiction of the department who are 19 years of age or less
4 and who were within the jurisdiction of 1 OF the FOLLOWING
5 COURTS:

6 (A) THE circuit court or the recorder's court of the city of
7 Detroit under section 606 of the revised judicature act of 1961,
8 ~~Act No. 236 of the Public Acts of 1961, being section 600.606 of~~
9 ~~the Michigan Compiled Laws 1961 PA 236, MCL 600.606, OR section~~
10 ~~10a(1)(c) of Act No. 369 of the Public Acts of 1919, being sec-~~
11 ~~tion 725.10a of the Michigan Compiled Laws, or 1919 PA 369, MCL~~
12 ~~725.10A.~~

13 (B) THE COURT HAVING GENERAL CRIMINAL JURISDICTION PURSUANT
14 TO A WAIVER OF JURISDICTION BY THE JUVENILE DIVISION OF THE PRO-
15 BATE COURT OR THE FAMILY DIVISION OF CIRCUIT COURT UNDER section
16 4 of chapter XIIIA of ~~Act No. 288 of the Public Acts of 1939,~~
17 ~~being section 712A.4 of the Michigan Compiled Laws 1939 PA 288,~~
18 ~~MCL 712A.4.~~

19 (C) THE JUVENILE DIVISION OF THE PROBATE COURT OR THE FAMILY
20 DIVISION OF CIRCUIT COURT IN A CASE DESIGNATED UNDER SECTION 2D
21 OF CHAPTER XIIIA OF 1939 PA 288, MCL 712A.2D.

22 (2) The department may establish and operate the youth
23 correctional facility or may contract on behalf of the state with

1 a private vendor for the construction or operation, or both, of
2 the youth correctional facility. If the department contracts
3 with a private vendor to construct, rehabilitate, develop, reno-
4 vate, or operate any existing or anticipated facility pursuant to
5 this section, the department shall require a written certifica-
6 tion from the private vendor regarding all of the following:

7 (a) If practicable to efficiently and effectively complete
8 the project, the private vendor shall follow a competitive bid
9 process for the construction, rehabilitation, development, or
10 renovation of the facility, and this process shall be open to all
11 Michigan residents and firms. The private vendor shall not dis-
12 criminate against any contractor on the basis of its affiliation
13 or nonaffiliation with any collective bargaining organization.

14 (b) The private vendor shall make a good faith effort to
15 employ, if qualified, Michigan residents at the facility.

16 (c) The private vendor shall make a good faith effort to
17 employ or contract with Michigan residents and firms to con-
18 struct, rehabilitate, develop, or renovate the facility.

19 (3) If the department contracts with a private vendor for
20 the operation of the youth correctional facility, the department
21 shall require by contract that the personnel employed by the pri-
22 vate vendor in the operation of the facility be certified as cor-
23 rectional officers to the same extent as would be required if
24 those personnel were employed in a correctional facility operated
25 by the department. The department also shall require by contract
26 that the private vendor meet requirements specified by the
27 department regarding security, protection of the public,

1 inspections by the department, programming, liability and
2 insurance, conditions of confinement, educational services
3 required under subsection (8), and any other issues the depart-
4 ment considers necessary for the operation of the youth correc-
5 tional facility. The department shall also require that the con-
6 tract include provisions to protect the public's interest if the
7 private vendor defaults on the contract. Before finalizing a
8 contract with a private vendor for the construction or operation
9 of the youth correctional facility, the department shall submit
10 the proposed contract to the standing committees of the senate
11 and the house of representatives having jurisdiction of correc-
12 tions issues, the corrections subcommittees of the standing com-
13 mittees on appropriations of the senate and the house of repre-
14 sentatives, and, with regard to proposed construction contracts,
15 the joint committee on capital outlay. A contract between the
16 department and a private vendor for the construction or operation
17 of the youth correctional facility shall be contingent upon
18 appropriation of the required funding. If the department con-
19 tracts with a private vendor under this section, the selection of
20 that private vendor shall be by open, competitive bid.

21 (4) The department shall not site a youth correctional
22 facility under this section in a city, village, or township
23 unless the local legislative body of that city, village, or town-
24 ship adopts a resolution approving the location.

25 (5) A private vendor operating a youth correctional facility
26 under a contract under this section shall not do any of the
27 following, unless directed to do so by the department policy:

1 (a) Calculate inmate release and parole eligibility dates.

2 (b) Award good time or disciplinary credits, or impose dis-
3 ciplinary time.

4 (c) Approve inmates for extensions of limits of
5 confinement.

6 (6) The youth correctional facility shall be open to visits
7 during all business hours, and during nonbusiness hours unless an
8 emergency prevents it, by any elected state senator or state
9 representative.

10 (7) Once each year, the department shall report on the oper-
11 ation of the facility. Copies of the report shall be submitted
12 to the chairpersons of the house and senate committees responsi-
13 ble for legislation on corrections or judicial issues, and to the
14 clerk of the house of representatives and the secretary of the
15 senate.

16 (8) Regardless of whether the department itself operates the
17 youth correctional facility or contracts with a private vendor to
18 operate the youth correctional facility, all of the following
19 educational services shall be provided for juvenile prisoners
20 housed at the facility who have not earned a high school diploma
21 or received a general education certificate (GED):

22 (a) The department or private vendor shall require that a
23 prisoner whose academic achievement level is not sufficient to
24 allow the prisoner to participate effectively in a program lead-
25 ing to the attainment of a GED certificate participate in classes
26 that will prepare him or her to participate effectively in the
27 GED program, and shall provide those classes in the facility.

1 (b) The department or private vendor shall require that a
2 prisoner who successfully completes classes described in
3 subdivision (a), or whose academic achievement level is otherwise
4 sufficient, participate in classes leading to the attainment of a
5 GED certificate, and shall provide those classes.

6 (9) Neither the department nor the private vendor shall seek
7 to have the youth correctional facility authorized as a public
8 school academy under the revised school code, ~~Act No. 451 of the~~
9 ~~Public Acts of 1976, being sections 380.1 to 380.1852 of the~~
10 ~~Michigan Compiled Laws~~ 1976 PA 451, MCL 380.1 TO 380.1852.

11 (10) A private vendor that operates the youth correctional
12 facility under a contract with the department shall provide writ-
13 ten notice of its intention to discontinue its operation of the
14 facility. This subsection does not authorize or limit liability
15 for a breach or default of contract. If the reason for the dis-
16 continuance is that the private vendor intends not to renew the
17 contract, the notice shall be delivered to the director of the
18 department at least 1 year before the contract expiration date.
19 If the discontinuance is for any other reason, the notice shall
20 be delivered to the director of the department at least 6 months
21 before the date on which the private vendor will discontinue its
22 operation of the facility. This subsection does not authorize or
23 limit liability for a breach or default of contract.

24 Sec. 29. All records and reports of investigations made by
25 a probation officer, and all case histories of probationers shall
26 be privileged or confidential communications not open to public
27 inspection. Judges and probation officers shall have access to

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1 the records, reports, and case histories. The probation officer,
2 the assistant director of probation, or the assistant director's
3 representative, shall permit the attorney general, the auditor
4 general, ~~and~~ law enforcement agencies, AND DESIGNATED REPRESENTATIVES OF A PRIVATE VENDOR THAT OPERATES A YOUTH CORRECTIONAL
5 FACILITY UNDER SECTION 20G to have access to the records,
6 reports, and case histories. The relation of confidence between
7 the probation officer and probationer or defendant under investigation shall remain inviolate.

10 Sec. 34. (1) Except as provided in section 34a, a prisoner
11 sentenced to an indeterminate sentence and confined in a state
12 correctional facility with a minimum in terms of years other than a
13 prisoner subject to disciplinary time is subject to the jurisdiction
14 of the parole board when the prisoner has served a period of time
15 equal to the minimum sentence imposed by the court for the crime of
16 which he or she was convicted, less good time and disciplinary
17 credits, if applicable.

18 (2) Except as provided in section 34a, a prisoner subject to
19 disciplinary time sentenced to an indeterminate sentence and
20 confined in a state correctional facility with a minimum in terms of
21 years is subject to the jurisdiction of the parole board when the
22 prisoner has served a period of time equal to the minimum sentence
23 imposed by the court for the crime of which he or she was convicted.

24 (3) If a prisoner other than a prisoner subject to disciplinary
25 time is sentenced for consecutive terms, whether received at the
26 same time or at any time during the life of the original sentence,
27 the parole board has jurisdiction over the prisoner for purposes of

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1 parole when the prisoner has served the total time of the added
2 minimum terms, less the good time and disciplinary credits allowed
3 by statute. The maximum terms of the sentences shall be added to
4 compute the new maximum term under this subsection, and discharge
5 shall be issued only after the total of the maximum sentences has
6 been served less good time and disciplinary credits, unless the
7 prisoner is paroled and discharged upon satisfactory completion of
8 the parole.

9 (4) If a prisoner subject to disciplinary time is sentenced for
10 consecutive terms, whether received at the same time or at any time
11 during the life of the original sentence, the parole board has
12 jurisdiction over the prisoner for purposes of parole when the
13 prisoner has served the total time of the added minimum terms. The
14 maximum terms of the sentences shall be added to compute the new
15 maximum term under this subsection, and discharge shall be issued
16 only after the total of the maximum sentences has been served,
17 unless the prisoner is paroled and discharged upon satisfactory
18 completion of the parole.

19 (5) If a prisoner other than a prisoner subject to disciplinary
20 time has 1 or more consecutive terms remaining to serve in addition
21 to the term he or she is serving, the parole board may terminate
22 the sentence the prisoner is presently serving at any
23 time after the minimum term of the sentence has been served.

24 (6) A prisoner under sentence for life or for a term of years,
25 other than a prisoner sentenced for life for murder in the first
26 degree, or sentenced for life for a violation of chapter XXXIII of

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1 the Michigan penal code, 1931 PA 328, MCL 750.200 to 750.212a, who
2 has served 10 calendar years of the sentence in the case of a
3 prisoner sentenced for any other crime committed before October 1,
4 1992, or, except as provided in subsection ~~(10)~~ (9), who has
5 served 20 calendar years of the sentence in the case of a prisoner
6 sentenced to imprisonment for life for violating or conspiring to
7 violate section 7401(2)(a)(i) of the public health code, 1978 PA
8 368, MCL 333.7401, who has another conviction for a serious crime,
9 or, except as provided in subsection ~~(10)~~ (9), who has served
10 17-1/2 calendar years of the sentence in the case of a prisoner
11 sentenced to imprisonment for life for violating or conspiring to
12 violate section 7401(2)(a)(i) of the public health code, 1978 PA
13 368, MCL 333.7401, who does not have another conviction for a
14 serious crime, or who has served 15 calendar years of the sentence
15 in the case of a prisoner sentenced for any other crime committed on
16 or after October 1, 1992, is subject to the jurisdiction of the
17 parole board and may be released on parole by the parole board,
18 subject to the following conditions:

19 (a) At the conclusion of 10 calendar years of the prisoner's
20 sentence and every 5 years thereafter until the prisoner is paroled,
21 discharged, or deceased, and in accordance with the procedures
22 described in section 35(4) to (6), 1 member of the parole board
23 shall interview the prisoner. The interview schedule prescribed in
24 this subdivision applies to all prisoners to whom this subsection is
25 applicable, regardless of the date on which they were sentenced.

26 (b) A parole shall not be granted a prisoner so sentenced until
27 after a public hearing held in the manner prescribed for pardons and

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1 commutations in sections 44 and 45. Notice of the public hearing
2 shall be given to the sentencing judge, or the judge's successor in
3 office, and parole shall not be granted if the sentencing judge, or
4 the judge's successor in office, files written objections to the
5 granting of the parole within 30 days of receipt of the notice of
6 hearing. The written objections shall be made part of the
7 prisoner's file.

8 (c) A parole granted under this subsection shall be for a
9 period of not less than 4 years and subject to the usual rules
10 pertaining to paroles granted by the parole board. A parole ordered
11 under this subsection is not valid until the transcript of the
12 record is filed with the attorney general whose certification of
13 receipt of the transcript shall be returnable to the office of the
14 parole board within 5 days. Except for medical records protected
15 under section 2157 of the revised judicature act of 1961, 1961 PA
16 236, MCL 600.2157, the file of a prisoner granted a parole under
17 this subsection is a public record.

18 (d) A parole shall not be granted under this subsection in the
19 case of a prisoner who is otherwise prohibited by law from parole
20 consideration. In such cases the interview procedures in section 44
21 shall be followed.

22 (7) In determining whether a prisoner convicted of violating or
23 conspiring to violate section 7401(2)(a)(i) of the public health
24 code, 1978 PA 368, MCL 333.7401, and sentenced to imprisonment for
25 life before October 1, 1998 is to be released on parole, the parole
26 board shall consider all of the following:

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1 (a) Whether the violation was part of a continuing series of
2 violations of section 7401 or 7403 of the public health code, 1978
3 PA 368, MCL 333.7401 and 333.7403, by that individual.

4 (b) Whether the violation was committed by the individual in
5 concert with 5 or more other individuals.

6 (c) Any of the following:

7 (i) Whether the individual was a principal administrator,
8 organizer, or leader of an entity that the individual knew or had
9 reason to know was organized, in whole or in part, to commit
violations of section 7401 or 7403 of the public health code, 1978
PA 368, MCL 333.7401 and 333.7403, and whether the violation for
which the individual was convicted was committed to further the
interests of that entity.

(ii) Whether the individual was a principal administrator,
organizer, or leader of an entity that the individual knew or had
reason to know committed violations of section 7401 or 7403 of the
public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and
whether the violation for which the individual was convicted was
committed to further the interests of that entity.

(iii) Whether the violation was committed in a drug-free school
zone.

(iv) Whether the violation involved the delivery of a
controlled substance to an individual less than 17 years of age or
possession with intent to deliver a controlled substance to an
individual less than 17 years of age.

(8) Except as provided in section 34a, a prisoner's release on
parole is discretionary with the parole board. The action of the
parole board in granting or denying a parole is appealable by the
prisoner, the prosecutor of the county from which the prisoner was
committed, or the victim of the crime for which the prisoner was
convicted. The appeal shall be to the circuit court in the county
from which the prisoner was committed, by leave of the court.

(9) If the sentencing judge, or his or her successor in office,
determines on the record that a prisoner described in subsection (6)
sentenced to imprisonment for life for violating or conspiring to
violate section 7401(2)(a)(i) of the public health code, 1978 PA
368, MCL 333.7401, has cooperated with law enforcement, the prisoner
is subject to the jurisdiction of the parole board and may be
released on parole as provided in subsection (6), 2-1/2 years
earlier than the time otherwise indicated in subsection (6). The
prisoner is considered to have cooperated with law enforcement if
the court determines on the record that the prisoner had no relevant
or useful information to provide. The court shall not make a
determination that the prisoner failed or refused to cooperate with
law enforcement on grounds that the defendant exercised his or her
constitutional right to trial by jury. If the court determines at
sentencing that the defendant cooperated with law enforcement, the
court shall include its determination in the judgment of sentence.

(10) As used in this section: ~~-, "serious"~~

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(A) "SERIOUS crime" means violating or conspiring to violate article 7 of the public health code, 1978 PA 368, MCL 333.7101 to 333.7545, that is punishable by imprisonment for more than 4 years, or an offense against a person in violation of section 83, 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d, 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

(B) "STATE CORRECTIONAL FACILITY" MEANS A FACILITY THAT HOUSES PRISONERS COMMITTED TO THE JURISDICTION OF THE DEPARTMENT, AND INCLUDES A YOUTH CORRECTIONAL FACILITY OPERATED UNDER SECTION 20G BY THE DEPARTMENT OR A PRIVATE VENDOR.

10 Sec. 63. (1) The wardens of the ~~several penal~~
11 ~~institutions~~ CORRECTIONAL FACILITIES of this state shall be
12 appointed by the director of corrections and ~~such wardens~~ shall
13 be within the state civil service. The assistant director in
14 charge of the bureau of ~~penal institutions~~ CORRECTIONAL
15 FACILITIES shall, subject to the approval of the director,
16 appoint ~~such~~ personnel within the bureau as may be necessary.
17 ~~:- Provided, That members~~ MEMBERS of the staff and employees of
18 each ~~penal institution in this state~~ CORRECTIONAL FACILITY
19 shall be appointed by the warden subject to the approval of the
20 director.

21 (2) AS USED IN THIS SECTION, "CORRECTIONAL FACILITY" DOES
22 NOT INCLUDE A YOUTH CORRECTIONAL FACILITY AUTHORIZED UNDER SEC-
23 TION 20G IF THAT FACILITY IS OPERATED BY A PRIVATE VENDOR.

24 Sec. 63a. (1) A person employed BY ~~by a penal institution in~~
25 ~~this state~~ THE DEPARTMENT OF CORRECTIONS IN A CORRECTIONAL FACILITY
26 who is injured as a result
27 of an assault by ~~an inmate of a penal institution~~ A PRISONER
HOUSED IN THE CORRECTIONAL FACILITY or injured during a riot

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1 shall receive his OR HER full wages by the department of
2 corrections until ~~workmen's~~ WORKER'S compensation benefits
3 begin and then shall receive in addition to ~~workmen's~~ WORKER'S
4 compensation benefits a supplement from the department which
5 together with the ~~workmen's~~ WORKER'S compensation benefits
6 shall equal but not exceed the weekly net wage of the employee at
7 the time of the injury. This supplement shall only apply while
8 the person is on the department's payroll and is receiving
9 ~~workmen's~~ WORKER'S compensation benefits. ~~and shall include an~~
10 ~~employee who is currently receiving workmen's compensation due to~~
11 ~~an injury covered by this section.~~ Fringe benefits normally
12 received by an employee shall be in effect during the time the
13 employee receives the supplement provided by this section from
14 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 YOUTH CORRECTIONAL FACILITY, IS INJURED AS A RESULT OF
AN ASSAULT BY A PRISONER HOUSED IN THE YOUTH CORRECTIONAL FACILITY
OR IS INJURED DURING A RIOT IN THE YOUTH CORRECTIONAL FACILITY.
HOWEVER, SUBSECTION (1) DOES NOT APPLY TO ANY PERSON EMPLOYED BY, OR
RETAINED UNDER CONTRACT BY, A PRIVATE VENDOR THAT OPERATES A YOUTH
CORRECTIONAL FACILITY.

15 ~~(2)(3) For purposes of this section, "penal institution"~~
16 ~~includes the state prison of southern Michigan in the township of~~
17 ~~Blackman, the county of Jackson; the state house of correction~~
18 ~~and branch of state prison at Marquette, in the county of~~
19 ~~Marquette; the Michigan reformatory at Ionia, in the county of~~
20 ~~Ionia; the Muskegon correctional facility, the Michigan training~~
21 ~~unit at Ionia and any other state prison, state reformatory,~~
22 ~~state farm probation recovery camp or other state probation~~
23 ~~facility for adults hereafter established~~

24 (A) "CORRECTIONAL FACILITY" MEANS A FACILITY THAT HOUSES
25 PRISONERS COMMITTED TO THE JURISDICTION OF THE DEPARTMENT, INCLUDING
26 A COMMUNITY CORRECTIONS CENTER.

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1 (B) "YOUTH CORRECTIONAL FACILITY" MEANS A FACILITY AUTHO-
2 RIZED UNDER SECTION 20G.

3 Sec. 65. (1) Under rules promulgated by the director of the
4 department, the assistant director in charge of the bureau of
5 correctional facilities, except as otherwise provided in this
6 section, may cause the transfer or re-transfer of a prisoner from
7 a correctional facility to which committed to any other correc-
8 tional facility, or temporarily to a state institution for medi-
9 cal or surgical treatment. In effecting a transfer, the assist-
10 ant director of the bureau of correctional facilities may utilize
11 the services of an executive or employee within the department
12 and of a law enforcement officer of the state.

13 (2) A prisoner who is subject to disciplinary time and is
14 committed to the jurisdiction of the department shall be confined
15 in a secure correctional facility for the duration of his or her
16 minimum sentence plus disciplinary time, except for periods when
17 the prisoner is away from the secure correctional facility while
18 being supervised by an employee of the department OR BY AN
19 EMPLOYEE OF A PRIVATE VENDOR THAT OPERATES A YOUTH CORRECTIONAL
20 FACILITY UNDER SECTION 20G for 1 of the following purposes:

21 (a) Visiting a critically ill relative.

22 (b) Attending the funeral of a relative.

23 (c) Obtaining medical services not otherwise available at
24 the secure correctional facility.

25 (d) Participating in a work detail.

26 (3) As used in this section, "offender" means a citizen of
27 the United States or a foreign country who has been convicted of

1 a crime and been given a sentence in a country other than the
2 country of which he or she is a citizen. If a treaty is in
3 effect between the United States and a foreign country, which
4 provides for the transfer of offenders from the jurisdiction of 1
5 of the countries to the jurisdiction of the country of which the
6 offender is a citizen, and if the offender requests the transfer,
7 the governor of this state or a person designated by the governor
8 may give the approval of this state to a transfer of an offender,
9 if the conditions of the treaty are satisfied.

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

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

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

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

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

5 (6) THE PROVISIONS OF THIS SECTION REGARDING PRISONERS
6 SUBJECT TO DISCIPLINARY TIME TAKE EFFECT BEGINNING ON THE EFFEC-
7 TIVE DATE OF 1994 PA 217, AS PRESCRIBED IN ENACTING SECTION 2 OF
8 THAT AMENDATORY ACT.

9 Sec. 69a. (1) A visitor to a state correctional facility
10 shall not be subjected to a pat down search unless every person
11 performing or assisting in performing the pat down search is of
12 the same sex as the person being searched. If the necessary per-
13 sonnel ~~is~~ ARE not readily available, a visitor at his or her
14 option may sign a waiver provided by the department of
15 corrections, ~~of~~ WAIVING the ~~provision~~ PROVISIONS of this
16 subsection.

17 (2) As used in this section: ~~, "pat~~

18 (A) "PAT down search" means a search of a person in which
19 the person conducting the search touches the body or clothing, or
20 both, of the person being searched to detect the presence of con-
21 cealed objects.

22 (B) "STATE CORRECTIONAL FACILITY" INCLUDES A YOUTH CORREC-
23 TIONAL FACILITY OPERATED UNDER SECTION 20G BY THE DEPARTMENT OR A
24 PRIVATE VENDOR.

25 Sec. 70. (1) A correctional facility may monitor telephone
26 communications over telephones available for use by prisoners in

1 the correctional facility if all of the following conditions are
2 met:

3 (a) The director promulgates rules under which the monitor-
4 ing is to be conducted, and the monitoring is conducted in
5 accordance with those rules. The rules shall include provisions
6 for minimizing the intrusiveness of the monitoring and shall pre-
7 scribe a procedure by which a prisoner may make telephone calls
8 to his or her attorney, and any federal, state, or local public
9 official if requested by that public official, that are not
10 monitored.

11 (b) The monitoring is routinely conducted ~~by employees of~~
12 ~~the department~~ for the purpose of preserving the security and
13 orderly management of the correctional facility, interdicting
14 drugs and other contraband, and protecting the public, AND IS
15 PERFORMED BY EMPLOYEES OF THE DEPARTMENT OR, IN THE CASE OF A
16 YOUTH CORRECTIONAL FACILITY OPERATED BY A PRIVATE VENDOR UNDER
17 SECTION 20G, IS CONDUCTED BY EMPLOYEES OF THE PRIVATE VENDOR.

18 (c) Notices are prominently posted on or near each telephone
19 subject to monitoring informing users of the telephone that com-
20 munications over the telephone may be monitored.

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

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

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

5 (3) Evidence obtained pursuant to this section regarding a
6 crime or attempted crime may be considered as evidence in a crim-
7 inal prosecution for that crime or attempted crime.

8 (4) As used in this section: ~~—, "monitor"—~~

9 (A) "CORRECTIONAL FACILITY" INCLUDES A YOUTH CORRECTIONAL
10 FACILITY OPERATED UNDER SECTION 20G BY THE DEPARTMENT OR A PRI-
11 VATE VENDOR.

12 (B) "MONITOR" means to listen to or record, or both.