

Act No. 512
Public Acts of 1998
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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Senators Cisky and Shugars

ENROLLED SENATE BILL No. 1222

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 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 1998 PA 315, 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:

Sec. 20g. (1) The department may establish a youth correctional facility which shall house only prisoners committed to the jurisdiction of the department who are 19 years of age or less and who were within the jurisdiction of 1 of the following courts:

(a) The circuit court or the recorder's court of the city of Detroit under section 606 of the revised judicature act of 1961, 1961 PA 236, MCL 600.606, or section 10a(1)(c) of 1919 PA 369, MCL 725.10a.

(b) The court having general criminal jurisdiction pursuant to a waiver of jurisdiction by the juvenile division of the probate court or the family division of circuit court under section 4 of chapter XIIA of 1939 PA 288, MCL 712A.4.

(c) The juvenile division of the probate court or the family division of circuit court in a case designated under section 2d of chapter XIIA of 1939 PA 288, MCL 712A.2d.

(2) The department may establish and operate the youth correctional facility or may contract on behalf of the state with a private vendor for the construction or operation, or both, of the youth correctional facility. If the department contracts with a private vendor to construct, rehabilitate, develop, renovate, or operate any existing or anticipated facility pursuant to this section, the department shall require a written certification from the private vendor regarding all of the following:

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

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

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

(3) If the department contracts with a private vendor for the operation of the youth correctional facility, the department shall require by contract that the personnel employed by the private vendor in the operation of the facility be certified as correctional officers to the same extent as would be required if those personnel were employed in a correctional facility operated by the department. The department also shall require by contract that the private vendor meet requirements specified by the department regarding security, protection of the public, inspections by the department, programming, liability and insurance, conditions of confinement, educational services required under subsection (8), and any other issues the department considers necessary for the operation of the youth correctional facility. The department shall also require that the contract include provisions to protect the public's interest if the private vendor defaults on the contract. Before finalizing a contract with a private vendor for the construction or operation of the youth correctional facility, the department shall submit the proposed contract to the standing committees of the senate and the house of representatives having jurisdiction of corrections issues, the corrections subcommittees of the standing committees on appropriations of the senate and the house of representatives, and, with regard to proposed construction contracts, the joint committee on capital outlay. A contract between the department and a private vendor for the construction or operation of the youth correctional facility shall be contingent upon appropriation of the required funding. If the department contracts with a private vendor under this section, the selection of that private vendor shall be by open, competitive bid.

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

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

(a) Calculate inmate release and parole eligibility dates.

(b) Award good time or disciplinary credits, or impose disciplinary time.

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

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

(7) Once each year, the department shall report on the operation of the facility. Copies of the report shall be submitted to the chairpersons of the house and senate committees responsible for legislation on corrections or judicial issues, and to the clerk of the house of representatives and the secretary of the senate.

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

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

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

(9) Neither the department nor the private vendor shall seek to have the youth correctional facility authorized as a public school academy under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.

(10) A private vendor that operates the youth correctional facility under a contract with the department shall provide written notice of its intention to discontinue its operation of the facility. This subsection does not authorize or limit liability for a breach or default of contract. If the reason for the discontinuance is that the private vendor intends not to renew the contract, the notice shall be delivered to the director of the department at least 1 year before the contract expiration date. If the discontinuance is for any other reason, the notice shall be delivered to the director of the department at least 6 months before the date on which the private vendor will discontinue its operation of the facility. This subsection does not authorize or limit liability for a breach or default of contract.

Sec. 29. 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 vendor

that operates a youth correctional facility under section 20g to have access to the records, reports, and case histories pertaining to prisoners assigned to the youth correctional facility. The relation of confidence between the probation officer and probationer or defendant under investigation shall remain inviolate.

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

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

(3) If a prisoner other than a prisoner subject to disciplinary time is sentenced for consecutive terms, whether received at the same time or at any time during the life of the original sentence, the parole board has jurisdiction over the prisoner for purposes of parole when the prisoner has served the total time of the added minimum terms, less the good time and disciplinary credits allowed by statute. The maximum terms of the sentences shall be added to compute the new maximum term under this subsection, and discharge shall be issued only after the total of the maximum sentences has been served less good time and disciplinary credits, unless the prisoner is paroled and discharged upon satisfactory completion of the parole.

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

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

(6) A prisoner under sentence for life or for a term of years, other than a prisoner sentenced for life for murder in the first degree, or sentenced for life for a violation of chapter XXXIII of the Michigan penal code, 1931 PA 328, MCL 750.200 to 750.212a, who has served 10 calendar years of the sentence in the case of a prisoner sentenced for any other crime committed before October 1, 1992, or, except as provided in subsection (9), who has served 20 calendar years of the sentence in the case of a prisoner 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, who has another conviction for a serious crime, or, except as provided in subsection (9), who has served 17-1/2 calendar years of the sentence in the case of a prisoner 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, who does not have another conviction for a serious crime, or who has served 15 calendar years of the sentence in the case of a prisoner sentenced for any other crime committed on or after October 1, 1992, is subject to the jurisdiction of the parole board and may be released on parole by the parole board, subject to the following conditions:

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

(b) A parole shall not be granted a prisoner so sentenced until after a public hearing held in the manner prescribed for pardons and commutations in sections 44 and 45. Notice of the public hearing shall be given to the sentencing judge, or the judge's successor in office, and parole shall not be granted if the sentencing judge, or the judge's successor in office, files written objections to the granting of the parole within 30 days of receipt of the notice of hearing. The written objections shall be made part of the prisoner's file.

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

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

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

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

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

(c) Any of the following:

(i) Whether the individual was a principal administrator, organizer, or leader of an entity that the individual knew or had 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:

(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.

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 youth correctional facility authorized under section 20g if that facility is operated by a private vendor.

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 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.

(3) For purposes of this section:

(a) "Correctional facility" means a facility that houses prisoners committed to the jurisdiction of the department, including a community corrections center.

(b) "Youth correctional facility" means a facility authorized under section 20g.

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 vendor that operates a youth correctional facility under section 20g 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. 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 sign a waiver provided by the department of corrections, waiving the provisions of this subsection.

(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" includes a youth correctional facility operated under section 20g by the department or a private vendor.

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 youth correctional facility operated by a private vendor under section 20g, is conducted by employees of the private vendor.

(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 pursuant to this section regarding a crime or attempted crime to any law enforcement agency having jurisdiction over that crime or attempted crime.

(3) Evidence obtained pursuant to 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 youth correctional facility operated under section 20g by the department or a private vendor.

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

This act is ordered to take immediate effect.



Secretary of the Senate.



Clerk of the House of Representatives.

Approved

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Governor.