

SENATE BILL No. 877

December 13, 2011, Introduced by Senator PROOS and referred to the Committee on Appropriations.

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending sections 20g, 20i, 29, 63, 63a, 69a, and 70 (MCL
791.220g, 791.220i, 791.229, 791.263, 791.263a, 791.269a, and
791.270), section 20g as amended by 2000 PA 211, section 20i as
added by 2006 PA 351, section 29 as amended by 2010 PA 248, and
sections 63, 63a, 69a, and 70 as amended by 1998 PA 512.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20g. ~~(1) The department may establish a youth~~
2 ~~correctional facility which shall house only prisoners committed to~~
3 ~~the jurisdiction of the department who are 19 years of age or less.~~
4 ~~If the department establishes or contracts with a private vendor~~
5 ~~for the operation of a youth correctional facility, following~~
6 ~~intake processing in a department operated facility, the department~~
7 ~~shall house all male prisoners who are 16 years of age or less at~~

~~the youth correctional facility unless the department determines that the prisoner should be housed at a different facility for reasons of security, safety, or because of the prisoner's specialized physical or mental health care needs.~~

~~—— (2) Except as provided in subsection (3), a prisoner who is 16 years of age or less and housed at a youth correctional facility shall only be placed in a general population housing unit with prisoners who are 16 years of age or less.~~

~~—— (3) A prisoner who becomes 17 years of age while being housed at a youth correctional facility and who has a satisfactory prison record may remain in a general population housing unit for no more than 1 year with prisoners who are 16 years of age or less.~~

~~—— (4) Except as provided in subsection (3), a prisoner who is 16 years of age or less and housed at a youth correctional facility shall not be allowed to be in the proximity of a prisoner who is 17 years of age or more without the presence and direct supervision of custody personnel in the immediate vicinity.~~

~~—— (5) 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.~~

~~—— (6) 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 (11), 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.~~

~~—— (7) 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.~~

~~—— (8) 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.~~

~~—— (9) 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.~~

~~1 (10) Once each year, the department shall report on the
2 operation of the facility. Copies of the report shall be submitted
3 to the chairpersons of the house and senate committees responsible
4 for legislation on corrections or judicial issues, and to the clerk
5 of the house of representatives and the secretary of the senate.~~

~~6 (11) Regardless of whether the department itself operates the
7 youth correctional facility or contracts with a private vendor to
8 operate the youth correctional facility, all of the following
9 educational services shall be provided for juvenile prisoners
10 housed at the facility who have not earned a high school diploma or
11 received a general education certificate (GED):~~

~~12 (a) The department or private vendor shall require that a
13 prisoner whose academic achievement level is not sufficient to
14 allow the prisoner to participate effectively in a program leading
15 to the attainment of a GED certificate participate in classes that
16 will prepare him or her to participate effectively in the GED
17 program, and shall provide those classes in the facility.~~

~~18 (b) The department or private vendor shall require that a
19 prisoner who successfully completes classes described in
20 subdivision (a), or whose academic achievement level is otherwise
21 sufficient, participate in classes leading to the attainment of a
22 GED certificate, and shall provide those classes.~~

~~23 (12) Neither the department nor the private vendor shall seek
24 to have the youth correctional facility authorized as a public
25 school academy under the revised school code, 1976 PA 451, MCL
26 380.1 to 380.1852.~~

~~27 (13) 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.~~

(1) THE DEPARTMENT MAY CONTRACT WITH THE OPERATOR OF THE PRIVATELY OWNED CORRECTIONAL FACILITY IN WEBBER TOWNSHIP, LAKE COUNTY, MICHIGAN, OR ANY OTHER PUBLIC OR PRIVATE CORRECTIONAL FACILITY SERVICE PROVIDER, THROUGH A COMPETITIVE BIDDING PROCESS, FOR THE HOUSING AND MANAGEMENT OF THE DEPARTMENT'S INMATES AT THAT FACILITY IF THE CONTRACT WILL RESULT IN AN ANNUAL COST SAVINGS OF AT LEAST 5%. IF THE DEPARTMENT CONTRACTS FOR THE HOUSING AND MANAGEMENT OF DEPARTMENT INMATES, THE DEPARTMENT SHALL REQUIRE A WRITTEN CERTIFICATION FROM THE PUBLIC OR PRIVATE VENDOR THAT THE PUBLIC OR PRIVATE VENDOR SHALL NOT DISCRIMINATE AGAINST ANY CONTRACTOR ON THE BASIS OF ITS AFFILIATION OR NONAFFILIATION WITH ANY COLLECTIVE BARGAINING ORGANIZATION AND SHALL MAKE A GOOD-FAITH EFFORT TO EMPLOY, IF QUALIFIED, MICHIGAN RESIDENTS AT THE FACILITY.

(2) THE CONTRACT BETWEEN THE DEPARTMENT AND THE PUBLIC OR PRIVATE VENDOR SHALL BE FOR AN INITIAL TERM OF 5 YEARS, SUBJECT TO

1 RENEWALS BY MUTUAL AGREEMENT OF 2 YEARS EACH. THE CONTRACT SHALL
2 REQUIRE THAT THE PERSONNEL EMPLOYED BY THE PUBLIC OR PRIVATE VENDOR
3 IN THE OPERATION OF THE FACILITY BE CERTIFIED AS CORRECTIONAL
4 OFFICERS TO THE SAME EXTENT AS WOULD BE REQUIRED IF THOSE PERSONNEL
5 WERE EMPLOYED IN A CORRECTIONAL FACILITY OPERATED BY THE
6 DEPARTMENT. THE DEPARTMENT ALSO SHALL REQUIRE BY CONTRACT THAT THE
7 PUBLIC OR PRIVATE VENDOR MEET REQUIREMENTS SPECIFIED BY THE
8 DEPARTMENT REGARDING SECURITY, PROTECTION OF THE PUBLIC,
9 INSPECTIONS BY THE DEPARTMENT, PROGRAMMING, LIABILITY AND
10 INSURANCE, CONDITIONS OF CONFINEMENT, EDUCATIONAL SERVICES, AND ANY
11 OTHER ISSUES THE DEPARTMENT CONSIDERS NECESSARY FOR THE OPERATION
12 OF THE CORRECTIONAL FACILITY. A CONTRACT BETWEEN THE DEPARTMENT AND
13 A PUBLIC OR PRIVATE VENDOR FOR THE OPERATION OF THE CORRECTIONAL
14 FACILITY SHALL BE CONTINGENT UPON APPROPRIATION OF THE REQUIRED
15 FUNDING.

16 (3) THE PUBLIC OR PRIVATE VENDOR OPERATING THE CORRECTIONAL
17 FACILITY UNDER A CONTRACT UNDER THIS SECTION SHALL NOT DO ANY OF
18 THE FOLLOWING, UNLESS DIRECTED TO DO SO BY DEPARTMENT POLICY:

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

20 (B) AWARD GOOD TIME OR DISCIPLINARY CREDITS, OR IMPOSE
21 DISCIPLINARY TIME.

22 (C) APPROVE INMATES FOR EXTENSIONS OF LIMITS OF CONFINEMENT.

23 (4) THE CORRECTIONAL FACILITY SHALL BE OPEN TO VISITS DURING
24 ALL BUSINESS HOURS AND DURING NONBUSINESS HOURS, UNLESS AN
25 EMERGENCY PREVENTS IT, BY ANY ELECTED STATE SENATOR OR STATE
26 REPRESENTATIVE.

27 (5) ONCE EACH YEAR, THE DEPARTMENT SHALL REPORT ON THE

1 OPERATION OF THE FACILITY. COPIES OF THE REPORT SHALL BE SUBMITTED
2 TO THE CHAIRPERSONS OF THE HOUSE AND SENATE COMMITTEES RESPONSIBLE
3 FOR LEGISLATION ON CORRECTIONS OR JUDICIAL ISSUES AND TO THE CLERK
4 OF THE HOUSE OF REPRESENTATIVES AND THE SECRETARY OF THE SENATE.

5 Sec. 20i. (1) If the ~~Michigan youth~~ **PRIVATE** correctional
6 facility ~~established pursuant to~~ **DESCRIBED IN** section 20g in Webber
7 township, Lake county, Michigan, is not utilized by the department
8 for housing inmates or detainees under the jurisdiction of the
9 department, the private vendor that operates ~~the Michigan youth~~
10 **THAT** correctional facility may utilize the facility for housing,
11 custody, and care of detainees or inmates from other local, state,
12 or federal agencies, either by directly contracting with those
13 local, state, or federal agencies or by having 1 or more local,
14 state, or federal agencies enter into an interlocal agreement with
15 Webber township, Lake county, or the county sheriff for Lake
16 county, who in turn may contract with the private vendor for
17 services to be provided under the terms of the interlocal
18 agreement, subject to the requirements of this section. If all
19 contractual factors regarding potential inmates or detainees are
20 equal, the private vendor shall give preference to the admission of
21 inmates or detainees sent from agencies within this state.

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

25 (a) The private vendor that operates the facility shall do all
26 of the following:

27 (i) Obtain accreditation of the facility by the American

1 correctional association within 24 months after the private vendor
2 commences operations at the facility and maintain that
3 accreditation throughout the term of any contract for the use of
4 the facility.

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

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

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

17 (3) An inmate or detainee housed at the facility shall not
18 participate in work release, a work camp, or another similar
19 program or activity occurring outside the secure perimeter of the
20 facility **WITHOUT THE AUTHORIZATION OF THE DEPARTMENT.**

21 (4) The facility shall allow the presence of on-site monitors
22 from any local, state, or federal agency that sends inmates or
23 detainees to the facility, for the purpose of monitoring the
24 conditions of confinement of those inmates or detainees. Whenever
25 the private vendor submits a written report to a local, state, or
26 federal agency that sends inmates or detainees to the facility, the
27 private vendor shall send copies of the written report to the

1 township supervisor for Webber township, the board of county
2 commissioners for Lake county, the sheriff of Lake county, and the
3 department.

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

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

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

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

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

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

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

17 (10) As used in this section:

18 (a) "Facility" means the ~~former Michigan youth~~ **PRIVATELY OWNED**
19 correctional facility described in subsection (1).

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

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

1 facility, or an escape or attempted escape from the facility.

2 Sec. 29. Except as otherwise provided by law, all records and
3 reports of investigations made by a probation officer, and all case
4 histories of probationers shall be privileged or confidential
5 communications not open to public inspection. Judges and probation
6 officers shall have access to the records, reports, and case
7 histories. The probation officer, the assistant director of
8 probation, or the assistant director's representative shall permit
9 the attorney general, the auditor general, and law enforcement
10 agencies to have access to the records, reports, and case histories
11 and shall permit designated representatives of a private vendor
12 that operates a youth correctional facility under section 20g to
13 have access to the records, reports, and case histories pertaining
14 to prisoners assigned to ~~the youth correctional~~ **THAT** facility. The
15 relation of confidence between the probation officer and
16 probationer or defendant under investigation shall remain
17 inviolate.

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

26 (2) As used in this section, "correctional facility" does not
27 include a ~~youth correctional facility authorized under~~ **DESCRIBED IN**

1 section 20g if that facility is operated by a private vendor.

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

16 (2) Subsection (1) also applies to a person who is employed by
17 the department of corrections who, while performing his or her
18 duties in a ~~youth~~-correctional facility **DESCRIBED IN SECTION 20G**,
19 is injured as a result of an assault by a prisoner housed in ~~the~~
20 ~~youth~~-**THAT** correctional facility or is injured during a riot in ~~the~~
21 ~~youth~~-**THAT** correctional facility. However, subsection (1) does not
22 apply to any person employed by, or retained under contract by, a
23 private vendor that operates a ~~youth~~-correctional facility
24 **DESCRIBED IN SECTION 20G**.

25 (3) For purposes of this section, +

26 ~~(a) "Correctional facility"~~ **"CORRECTIONAL FACILITY"** means a
27 facility that houses prisoners committed to the jurisdiction of the

1 department, including a community corrections center.

2 ~~—— (b) "Youth correctional facility" means a facility authorized~~
3 ~~under section 20g.~~

4 Sec. 69a. (1) A visitor to a state correctional facility shall
5 not be subjected to a pat down search unless every person
6 performing or assisting in performing the pat down search is of the
7 same sex as the person being searched. If the necessary personnel
8 are not readily available, a visitor at his or her option may ~~sign~~
9 **WAIVE THE PROVISIONS OF THIS SUBSECTION BY SIGNING** a waiver
10 provided by the department of corrections. ~~, waiving the provisions~~
11 ~~of this subsection.~~

12 (2) As used in this section:

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

17 (b) "State correctional facility" includes a ~~youth~~
18 correctional facility operated under section 20g by the department
19 or a private vendor.

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

24 (a) The director promulgates rules under which the monitoring
25 is to be conducted, and the monitoring is conducted in accordance
26 with those rules. The rules shall include provisions for minimizing
27 the intrusiveness of the monitoring and shall prescribe a procedure

1 by which a prisoner may make telephone calls to his or her
2 attorney, and any federal, state, or local public official if
3 requested by that public official, that are not monitored.

4 (b) The monitoring is routinely conducted for the purpose of
5 preserving the security and orderly management of the correctional
6 facility, interdicting drugs and other contraband, and protecting
7 the public, and is performed by employees of the department or, in
8 the case of a ~~youth~~-correctional facility operated by a private
9 vendor under section 20g, is conducted by employees of the private
10 vendor.

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

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

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

19 (2) A correctional facility shall disclose information
20 obtained ~~pursuant to~~ **UNDER** this section regarding a crime or
21 attempted crime to any law enforcement agency having jurisdiction
22 over that crime or attempted crime.

23 (3) Evidence obtained ~~pursuant to~~ **UNDER** this section regarding
24 a crime or attempted crime may be considered as evidence in a
25 criminal prosecution for that crime or attempted crime.

26 (4) As used in this section:

27 (a) "Correctional facility" includes a ~~youth~~-correctional

1 facility operated under section 20g by the department or a private
2 vendor.

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