

# HOUSE BILL No. 5152

October 9, 1989, Introduced by Reps. Kilpatrick, DeMars, Profit, Murphy, Gubow, Wallace, Bartnik, Gire, Martin, Bender, Perry Bullard, Jaye, Emerson and Saunders and referred to the Committee on House Oversight.

A bill to amend sections 1, 2, 3, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20b, 22, 23, 25, 30, 38, 62, 65, 66, and 67 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 as herein defined, to pardons, reprieves, commutations, and paroles, to the administration of penal institutions, correctional farms, and probation recovery camps, to prison labor and prison 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; and to repeal all acts and parts of acts inconsistent with the provisions of this act,"

section 2 as amended by Act No. 79 of the Public Acts of 1987,  
section 6 as amended by Act No. 271 of the Public Acts of 1986,

sections 16, 17, and 19 as added by Act No. 303 of the Public Acts of 1980, section 20b as added by Act No. 485 of the Public Acts of 1980, section 30 as added by Act No. 59 of the Public Acts of 1988, section 38 as amended by Act No. 314 of the Public Acts of 1982, section 62 as amended by Act No. 251 of the Public Acts of 1987, section 65 as amended by Act No. 179 of the Public Acts of 1982, and section 67 as amended by Act No. 510 of the Public Acts of 1988, being sections 791.201, 791.202, 791.203, 791.205, 791.206, 791.207, 791.209, 791.210, 791.211, 791.212, 791.213, 791.214, 791.216, 791.217, 791.219, 791.220b, 791.222, 791.223, 791.225, 791.230, 791.238, 791.262, 791.265, 791.266, and 791.267 of the Michigan Compiled Laws; and to repeal certain parts of the act.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Section 1. Sections 1, 2, 3, 5, 6, 7, 9, 10, 11, 12, 13,  
2 14, 16, 17, 19, 20b, 22, 23, 25, 30, 38, 62, 65, 66, and 67 of  
3 Act No. 232 of the Public Acts of 1953, section 2 as amended by  
4 Act No. 79 of the Public Acts of 1987, section 6 as amended by  
5 Act No. 271 of the Public Acts of 1986, sections 16, 17, and 19  
6 as added by Act No. 303 of the Public Acts of 1980, section 20b  
7 as added by Act No. 485 of the Public Acts of 1980, section 30 as  
8 added by Act No. 59 of the Public Acts of 1988, section 38 as  
9 amended by Act No. 314 of the Public Acts of 1982, section 62 as  
10 amended by Act No. 251 of the Public Acts of 1987, section 65 as  
11 amended by Act No. 179 of the Public Acts of 1982, and section 67  
12 as amended by Act No. 510 of the Public Acts of 1988, being  
13 sections 791.201, 791.202, 791.203, 791.205, 791.206, 791.207,

1 791.209, 791.210, 791.211, 791.212, 791.213, 791.214, 791.216,  
2 791.217, 791.219, 791.220b, 791.222, 791.223, 791.225, 791.230,  
3 791.238, 791.262, 791.265, 791.266, and 791.267 of the Michigan  
4 Compiled Laws, are amended to read as follows:

5       Sec. 1. There is hereby created a state department of cor-  
6 rections, hereinafter called the department, which shall possess  
7 the powers and perform the duties granted TO and conferred UPON  
8 IT. The department shall consist of and be administered by A  
9 DIRECTOR, WHO SHALL BE APPOINTED AS PROVIDED IN SECTION 3, AND  
10 SUCH OFFICERS AND ASSISTANTS AS MAY BE APPOINTED OR EMPLOYED IN  
11 THE DEPARTMENT. ~~a commission of 6 members appointed by the gov-~~  
12 ~~ernor, by and with the advice and consent of the senate, to be~~  
13 ~~known as the Michigan corrections commission, hereinafter called~~  
14 ~~the commission, not more than 3 of whom shall be members of the~~  
15 ~~same political party, each of whom shall qualify by taking the~~  
16 ~~constitutional oath of office, and filing the same in the office~~  
17 ~~of the secretary of state, and of such other officers and assist-~~  
18 ~~ants as may be appointed or employed in the department, including~~  
19 ~~a director as its executive head. A person holding a position~~  
20 ~~either state or federal, or a person drawing a salary from a~~  
21 ~~municipal unit of the state, shall not be eligible for appoint-~~  
22 ~~ment to the commission, without having first resigned from that~~  
23 ~~position. The term of office of each member of the commission~~  
24 ~~shall be 6 years. The governor shall fill a vacancy occurring in~~  
25 ~~the membership of the commission for the unexpired term only, and~~  
26 ~~for cause established on hearing may remove a member. Each~~  
27 ~~member of the commission shall hold office until his successor~~

1 ~~shall be appointed and shall qualify. The per diem compensation~~  
2 ~~of the commission and the schedule for reimbursement of expenses~~  
3 ~~shall be established annually by the legislature. The department~~  
4 ~~and commission~~ shall have its executive office at Lansing. The  
5 department of management and budget shall provide suitable office  
6 accommodations. ~~Meetings of the commission may be held at other~~  
7 ~~suitable places as the commission may designate.~~

8       Sec. 2. ~~(1) The commission shall elect annually a chair~~  
9 ~~person and other officers as it considers expedient. A meeting~~  
10 ~~shall be held not less than once each month or at other times as~~  
11 ~~considered necessary. A majority of the total membership of the~~  
12 ~~commission shall constitute a quorum for the transaction of~~  
13 ~~business. The commission shall constitute the responsible~~  
14 ~~authority.~~ THE DIRECTOR IS RESPONSIBLE for the administration of  
15 the correctional facilities, correctional industries, parole, and  
16 probation of the state, subject to the limitations set forth in  
17 this act. The ~~commission~~ DIRECTOR shall determine all matters  
18 relating to the unified development of the correctional facili-  
19 ties, correctional industries, parole, and probation of the state  
20 and shall coordinate and adjust the agencies and correctional  
21 facilities within its jurisdiction so that each shall form an  
22 integral part of a general system.

23       ~~(2) The business which the commission may perform shall be~~  
24 ~~conducted at a public meeting held in compliance with Act No. 267~~  
25 ~~of the Public Acts of 1976, being sections 15.261 to 15.275 of~~  
26 ~~the Michigan Compiled Laws. Public notice of the time, date, and~~

1 ~~place of the meeting shall be given in the manner required by Act~~  
2 ~~No. 267 of the Public Acts of 1976.~~

3       Sec. 3. (1) The ~~commission~~ GOVERNOR, WITH THE ADVICE AND  
4 CONSENT OF THE SENATE, shall appoint a director of corrections,  
5 who shall be qualified by training and experience in penology.  
6 ~~He~~ THE DIRECTOR shall hold office at the pleasure of the  
7 ~~commission except that he may be removed for cause and only~~  
8 ~~after a public hearing before the commission.~~ ~~He~~ GOVERNOR. THE  
9 DIRECTOR shall receive such salary as shall be appropriated by  
10 the legislature, together with actual and necessary traveling and  
11 other expenses. ~~The director shall be the chief administrative~~  
12 ~~officer of the commission and shall be responsible to the commis-~~  
13 ~~sion for the exercise of the powers and duties prescribed and~~  
14 ~~conferred by this act, and for such other powers and duties as~~  
15 ~~may be assigned by the commission, subject at all times to its~~  
16 ~~control.~~ Subject to the provisions of this act, ~~and to the~~  
17 ~~rules and regulations adopted by the commission,~~ the director  
18 shall have full power and authority to supervise and control the  
19 affairs of the department. ~~, and the several bureaus thereof,~~  
20 ~~and he shall carry out the orders of the commission.~~

21       (2) THE TERM OF SERVICE OF THE DIRECTOR WHO IS SERVING ON  
22 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSEC-  
23 TION SHALL END 30 DAYS AFTER THE EFFECTIVE DATE OF THIS SUBSEC-  
24 TION, AND HIS OR HER SUCCESSOR SHALL BE APPOINTED AS PROVIDED IN  
25 SUBSECTION (1).

26       Sec. 5. The director ~~, subject to the approval of the~~  
27 ~~commission,~~ shall appoint ~~an assistant~~ A DEPUTY director in

1 charge of ~~probation, an assistant director in charge of pardons~~  
2 ~~and paroles, an assistant~~ THE BUREAU OF FIELD SERVICES, A DEPUTY  
3 director in charge of ~~penal institutions, an assistant~~ THE  
4 BUREAU OF CORRECTIONAL FACILITIES, A DEPUTY director in charge of  
5 THE BUREAU OF prison industries, and ~~an assistant director in~~  
6 ~~charge of a youth division~~ OTHER ASSISTANT OR DEPUTY DIRECTORS  
7 AS THE DIRECTOR CONSIDERS APPROPRIATE. The ~~assistant~~ DEPUTY  
8 directors shall exercise and perform the respective powers and  
9 duties prescribed and conferred by this act, and such other  
10 powers and duties as may be assigned by the director, subject at  
11 all times to ~~his~~ THE DIRECTOR'S control.

12       Sec. 6. (1) The director may promulgate rules pursuant to  
13 ~~—~~ the administrative procedures act of 1969, Act No. 306 of the  
14 Public Acts of 1969, as amended, being sections 24.201 to 24.328  
15 of the Michigan Compiled Laws, which may provide:

16       (a) For the control, management, and operation of the gen-  
17 eral affairs of the department.

18       (b) For supervision and control of probationers and proba-  
19 tion officers throughout the state.

20       (c) For the manner in which applications for pardon,  
21 reprieve, medical commutation, or commutation shall be made to  
22 the governor; for the procedures for handling applications and  
23 recommendations by the parole board; for the manner in which  
24 paroles shall be considered, the criteria to be used to reach  
25 release decisions, the procedures for medical and special  
26 paroles, and the duties of the parole board in those matters; for  
27 interviews on paroles and for the notice of intent to conduct an

1 interview; for the entering of appropriate orders granting or  
2 denying paroles; for the supervision and control of paroled pris-  
3 oners; and for the revocation of parole.

4 (d) For the management and control of state penal institu-  
5 tions, correctional farms, probation recovery camps, and programs  
6 for the care and supervision of youthful trainees separate and  
7 apart from persons convicted of crimes within the jurisdiction of  
8 the department. Except as provided for in section 62(3), this  
9 subdivision shall not apply to detention facilities operated by  
10 local units of government used to detain persons less than 72  
11 hours. The rules may permit the use of portions of penal insti-  
12 tutions in which persons convicted of crimes are detained. The  
13 rules shall provide that decisions as to the removal of a youth  
14 from the youthful trainee facility or the release of a youth from  
15 the supervision of the department shall be made by the department  
16 and shall assign responsibility for those decisions to a  
17 committee.

18 (e) For the management and control of prison labor and  
19 industry.

20 (2) The director may promulgate rules providing for a parole  
21 board structure consisting of 3-member panels.

22 (3) The director may promulgate further rules with respect  
23 to the affairs of the department as the director considers neces-  
24 sary or expedient for the proper administration of this act. The  
25 director may modify, amend, supplement, or rescind a rule.

26 (4) The director ~~and the corrections commission~~ shall not  
27 promulgate a rule or adopt a guideline which prohibits a

1 probation officer ~~/~~ or parole officer from carrying a firearm  
2 while on duty.

3       Sec. 7. ~~On or before the 15th day of January of each year,~~  
4 ~~the commission~~ THE DIRECTOR shall make to the governor and leg-  
5 islature ~~a~~ AN ANNUAL report of the department for the preceding  
6 fiscal year. ~~Such report, if so ordered by the board of state~~  
7 ~~auditors, shall be printed and distributed in such manner and to~~  
8 ~~such persons, organizations, institutions and officials as said~~  
9 ~~board may direct.~~

10       Sec. 9. The ~~commission~~ DIRECTOR shall study the problem  
11 of crime prevention and foster research in criminology. ~~It~~ THE  
12 DIRECTOR shall lend ~~its~~ HIS OR HER aid in local crime preven-  
13 tion activities.

14       Sec. 10. The ~~commission~~ DIRECTOR may require a bond from  
15 any officer or employee appointed by or subject to the control of  
16 the ~~commission~~ DIRECTOR, conditioned upon the faithful per-  
17 formance of ~~his~~ THE OFFICER OR EMPLOYEE'S duties and the  
18 accounting for all money and property within ~~his~~ THE OFFICER OR  
19 EMPLOYEE'S control.

20       Sec. 11. The ~~commission~~ DIRECTOR, SUBJECT TO THE AUTHOR-  
21 ITY OF THE GOVERNOR, shall exercise the powers and duties created  
22 by Act No. 89 of the Public Acts of 1935, being sections 798.101  
23 to 798.103, ~~inclusive,~~ of the MICHIGAN Compiled Laws, ~~of~~  
24 ~~1948,~~ and by any interstate compact made and entered into pursu-  
25 ant to ~~said~~ THAT act, in regard to the control and supervision  
26 of parolees and probationers, and in regard to cooperative effort  
27 and mutual assistance in the prevention of crime and in the



1 enforcement of the penal laws and policies of the contracting  
2 states, and the ~~commission~~ DIRECTOR may promulgate such rules  
3 ~~and regulations as may be deemed~~ AS THE DIRECTOR CONSIDERS nec-  
4 essary to more effectively carry out the terms of ~~the aforesaid~~  
5 THAT act and compacts made pursuant ~~thereto~~ TO THAT ACT, PURSU-  
6 ANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF  
7 THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO 24.328 OF THE  
8 MICHIGAN COMPILED LAWS.

9       Sec. 12. (1) ~~The commission shall devise a seal, and the~~  
10 ~~rules of the commission shall be published over the seal of the~~  
11 ~~commission. All orders of the commission shall be issued over~~  
12 ~~the seal of the commission.~~ A copy of the records and papers in  
13 the office of the department, certified by an authorized agent of  
14 the ~~commission and authenticated by the seal of the commission~~  
15 DIRECTOR, shall be evidence in all cases with the same effect as  
16 the originals. ~~A description of the seal, with an impression of~~  
17 ~~the seal, shall be filed in the office of the secretary of~~  
18 ~~state. The commission shall be a body corporate, and~~ THE DIREC-  
19 TOR, ON BEHALF OF THE DEPARTMENT, may lease lands under ~~its~~ THE  
20 jurisdiction OF THE DEPARTMENT, grant easements over, through,  
21 under, or across those lands for a lawful purpose, and do any  
22 other act necessary to carry out this act.

23       (2) ~~A~~ EXCEPT AS OTHERWISE PROVIDED BY LAW, A writing pre-  
24 pared, owned, used, in the possession of, or retained by the  
25 ~~commission~~ DEPARTMENT in the performance of an official func-  
26 tion shall be made available to the public in compliance with THE  
27 FREEDOM OF INFORMATION ACT, Act No. 442 of the Public Acts of

1 1976, being sections 15.231 to 15.246 of the Michigan Compiled  
2 Laws.

3       Sec. 13. The ~~commission~~ DEPARTMENT may receive on behalf  
4 of the state of Michigan any grant, devise, bequest, donation,  
5 gift or assignment of money, bonds or choses in action, or of any  
6 property, real or personal, and accept the same, so that the  
7 right and title to the same shall pass to the state of Michigan;  
8 and all such bonds, notes or choses in action, or the proceeds  
9 thereof when collected, and all other property or thing of value  
10 so received by the ~~commission~~ DEPARTMENT shall be used for the  
11 purposes set forth in the grant, devise, bequest, donation, gift  
12 or assignment, ~~— Provided, That —~~ EXCEPT THAT such purposes  
13 shall be within the powers conferred on ~~said commission~~ THE  
14 DIRECTOR OR THE DEPARTMENT. Whenever it shall be necessary to  
15 protect or assert the right or title of the ~~commission~~  
16 DEPARTMENT to any property so received or derived as aforesaid,  
17 or to collect or reduce into possession any bond, note, bill or  
18 chose in action, the attorney general is directed to take the  
19 necessary and proper proceedings and to bring suit in the name of  
20 the ~~commission~~ DEPARTMENT on behalf of the state of Michigan in  
21 any court of competent jurisdiction, state or federal, and to  
22 prosecute all such suits.

23       Sec. 14. The ~~commission~~ DIRECTOR shall prepare for sub-  
24 mission to the department of ~~administration~~ MANAGEMENT AND  
25 BUDGET the estimated needs and costs to operate the department,  
26 and the several ~~penal institutions~~ CORRECTIONAL FACILITIES

1 under the jurisdiction of the department, in accordance with the  
2 requirements of the laws of this state.

3       Sec. 16. (1) The department shall develop a comprehensive  
4 plan for determining the need for establishing various types of  
5 correctional facilities, for selecting the location of ~~a~~ cor-  
6 rectional ~~facility~~ FACILITIES, and for determining the size of  
7 the correctional ~~facility~~ FACILITIES. The comprehensive plan  
8 shall not be implemented until the legislature, by concurrent  
9 resolution adopted by a majority of those elected and serving in  
10 each house by a record roll call vote, approves the comprehensive  
11 plan.

12       (2) The department shall determine the need for ~~a~~ correc-  
13 tional ~~facility~~ FACILITIES based upon the comprehensive plan  
14 developed pursuant to subsection (1).

15       (3) The department shall publish a notice that it proposes  
16 to establish a correctional facility in a particular city, vil-  
17 lage, or township. The notice shall appear in a newspaper of  
18 general circulation in the area. In addition, the department  
19 shall notify the following officials:

20       (a) The state senator and the state representative repre-  
21 senting the district in which the correctional facility is to be  
22 located.

23       (b) The president of each state supported college or univer-  
24 sity whose campus is located within 1 mile of the proposed cor-  
25 rectional facility.

26       (c) The chief elected official of the city, village, or  
27 township in which the correctional facility is to be located.

1 (d) Each member of the governing body of the city, village,  
2 or township in which the correctional facility is to be located.

3 (e) Each member of the county board of commissioners OF THE  
4 COUNTY in which the correctional facility is to be located.

5 (f) The president of the local school board of the local  
6 school district in which the correctional facility is to be  
7 located.

8 (g) The president of the intermediate school board of the  
9 intermediate school district in which the correctional facility  
10 is to be located.

11 (4) With the notice, the department shall request the chair-  
12 person of the county board of commissioners of the county in  
13 which the correctional facility is to be located and the person  
14 notified pursuant to subsection (3)(c) to create a local advisory  
15 board to assist in the identification of potential sites for the  
16 correctional facility, to act as a liaison between the department  
17 and the local community, and to ensure that the comprehensive  
18 plan is being followed by the department. The officials  
19 requested to create a local advisory board pursuant to this sub-  
20 section shall serve as co-chairpersons of that local advisory  
21 board.

22 (5) After the requirements of subsections (1), (2), (3), and  
23 (4) are completed and the department has selected a potential  
24 site, the department shall hold a public hearing in the city,  
25 village, or township in which the potential site is located. The  
26 department shall participate in the hearing and shall make a  
27 reasonable effort to respond in writing to concerns and questions

1 raised on the record at the hearing. The hearing shall not be  
2 held until the local advisory board created by subsection (4) has  
3 organized, or sooner than 30 days after the notice is sent pursu-  
4 ant to subsection (3), whichever occurs first.

5 (6) Hearings the department ~~shall conduct~~ CONDUCTS under  
6 subsection (5) shall be open to the public and shall be held in a  
7 place available to the general public. Any person shall be per-  
8 mitted to attend a hearing except as otherwise provided in this  
9 section. A person shall not be required as a condition to  
10 attendance at a hearing to register or otherwise provide his or  
11 her name or other information or otherwise to fulfill a condition  
12 precedent to attendance. A person shall be permitted to address  
13 the hearing under written procedures established by the  
14 department. A person shall not be excluded from a hearing except  
15 for a breach of the peace actually committed at the meeting.

16 (7) The following provisions shall apply with respect to  
17 public notice of hearings required under this section:

18 (a) A public notice shall always contain the name of the  
19 department, its telephone number, and its address.

20 (b) A public notice shall always be posted at the  
21 department's principal office and other locations considered  
22 appropriate by the department.

23 (c) The required public notice for a hearing shall be posted  
24 in the office of the county clerk of the county in which the  
25 CORRECTIONAL facility is to be located and shall be published in  
26 a newspaper of general circulation in the county in which the  
27 CORRECTIONAL facility is to be located.

1 (d) A public notice stating the date, time, and place of the  
2 hearing shall be posted at least 10 days before the hearing.

3 (8) Minutes of each hearing required under this section  
4 shall be kept showing the date, time, place, members of the local  
5 advisory board present, members of the local advisory board  
6 absent, and a summary of the discussions at the hearing. The  
7 minutes shall be public records open to public inspection and  
8 shall be available at the address designated on posted public  
9 notices pursuant to subsection (7). Copies of the minutes shall  
10 be available from the department to the public at the reasonable  
11 estimated cost for printing and copying.

12 (9) On the basis of the information developed by the depart-  
13 ment during the course of the site selection process, and after  
14 community concerns have been responded to by the department pur-  
15 suant to subsection (5), the ~~commission~~ DIRECTOR shall make a  
16 final site determination for the correctional facility. The  
17 ~~commission~~ DIRECTOR shall make a finding that the site determi-  
18 nation was made in compliance with this section. This finding  
19 and notice of final site selection shall be transmitted in writ-  
20 ing by the ~~commission~~ DIRECTOR to the local advisory board, the  
21 officials described in subsection (3), and the chairpersons of  
22 the senate and house appropriations committees.

23 (10) An option to lease, purchase, or use property may be  
24 obtained but shall not be exercised by the state for a correc-  
25 tional facility until the ~~commission~~ DIRECTOR has made a final  
26 site determination and has transmitted a notice of final site  
27 selection as required in subsection (9).

1       Sec. 17. (1) A person who resides in the city, village, or  
2 township in which the department has determined a need for a cor-  
3 rectional facility may bring an action in a court of proper  
4 jurisdiction against the department if the department is not  
5 abiding by the site selection process provided in section 16.

6       (2) An action brought under this section shall not be main-  
7 tained if it is filed more than 45 days after the ~~commission~~  
8 DIRECTOR sends notification of the final site selected to the  
9 officials as required in section 16(9).

10       Sec. 19. This section and sections 15 to 18 shall apply to  
11 correctional facilities established or proposed after the effec-  
12 tive date of the concurrent resolution approving the comprehen-  
13 sive plan and to correctional facilities which are proposed  
14 before the effective date of the concurrent resolution approving  
15 the comprehensive plan but for which sites have not been selected  
16 by the FORMER commission OF CORRECTIONS OR THE DIRECTOR as of  
17 that date.

18       Sec. 20b. The ~~commission~~ DIRECTOR shall select sites as  
19 necessary to implement this section and sections 20, 20a, and  
20 20c. In the comprehensive plan required by ~~Act No. 303 of the~~  
21 ~~Public Acts of 1980, the commission~~ SECTIONS 15 TO 19, THE  
22 DIRECTOR shall select 3 sites in region 1, of which not more than  
23 2 shall be located in the city of Detroit, 1 site in region 2, 1  
24 site in region 3, 1 site in region 4, AND 1 site in region 5 and  
25 shall report those recommended sites to the governor, the senate  
26 and house appropriations committees, the state senator and state

1 representative representing a district in which a recommended  
2 site is located, and the senate and house fiscal agencies.

3       Sec. 22. (1) The ~~commission~~ DIRECTOR shall appoint,  
4 supervise, and remove probation officers for the circuit court  
5 and recorder's court of this state, in the manner provided by the  
6 laws of this state.

7       (2) The ~~commission~~ DIRECTOR may remove a probation  
8 employee for incompetency, misconduct, or failure to carry out  
9 the orders of the department, or for neglect of duty.

10       (3) A probation employee who receives compensation from  
11 public funds under this act, and receives any compensation, gift,  
12 or gratuity from a person under probation or from a person, part-  
13 nership, association, or corporation for doing or refraining from  
14 doing an official act connected with his or her work as a proba-  
15 tion employee, or connected with a proceeding pending or about to  
16 be instituted in the circuit court or recorder's court is guilty  
17 of a misdemeanor.

18       ~~(4) The commission shall be vested with the powers and~~  
19 ~~duties prescribed by the law with respect to probation recovery~~  
20 ~~camps.~~

21       Sec. 23. The ~~assistant~~ DEPUTY director in charge of  
22 ~~probation~~ THE BUREAU OF FIELD SERVICES shall be the administra-  
23 tive head of the bureau of ~~probation~~ FIELD SERVICES subject to  
24 the authority and supervision of the director of the department  
25 of corrections. ~~, and the commission.~~ The ~~assistant~~ DEPUTY  
26 director shall exercise general supervision over the  
27 administration of probation in the circuit ~~court~~ COURTS OF THE



1 STATE and THE recorder's court of the ~~state~~ CITY OF DETROIT.  
2 The ~~assistant~~ DEPUTY director, with the approval of the direc-  
3 tor, shall appoint personnel other than probation officers neces-  
4 sary for the conduct of the bureau. The ~~assistant~~ DEPUTY  
5 director shall endeavor to secure the effective application of  
6 the probation system in all courts of the state and the enforce-  
7 ment of probation laws. The ~~assistant~~ DEPUTY director shall  
8 supervise the work of probation personnel and shall have access  
9 to all probation offices and records. The ~~assistant~~ DEPUTY  
10 director shall prescribe the form of records to be kept and  
11 reports to be made by probation personnel and shall promulgate  
12 general rules which shall regulate the procedure for the adminis-  
13 tration of probation, including investigation, supervision, case  
14 work, record keeping, and accounting. The ~~assistant~~ DEPUTY  
15 director shall collect and maintain a complete file of presen-  
16 tence investigations made by probation officers throughout the  
17 state. The ~~assistant~~ DEPUTY director shall collect, compile,  
18 and publish statistical and other information relating to proba-  
19 tion work in all courts and other information of value in proba-  
20 tion service. All probation officers shall submit the required  
21 reports to the department of corrections on forms to be pre-  
22 scribed and furnished by the department of corrections.

23       Sec. 25. ~~Where~~ IF the courts of 2 OR more ~~than 1 county~~  
24 COUNTIES are served by the same probation officer or officers,  
25 ~~the compensation of such officer or officers and~~ the expenses  
26 of administering probation service within ~~such~~ THOSE counties  
27 shall be met jointly by the boards of COMMISSIONERS OF THOSE

1 COUNTIES. ~~supervisors therein: Provided, That when it shall~~  
2 ~~appear to the commission that any county is unable to adequately~~  
3 ~~maintain its probation program according to the standards set by~~  
4 ~~the state bureau of probation, then service grants to such an~~  
5 ~~extent and under such conditions as the commission may determine,~~  
6 ~~may be made available to said county: Provided, That uniform~~  
7 ~~rules to be followed in making available such service grants~~  
8 ~~first shall be promulgated by the commission.~~

9       Sec. 30. (1) Except as provided in subsection (2), the fol-  
10 lowing information or records are exempt from disclosure under  
11 the freedom of information act, if requested by or on behalf of a  
12 prisoner committed to the jurisdiction of the ~~commission~~  
13 DEPARTMENT, whether serving a sentence in a state or county cor-  
14 rectional facility, another state's correctional facility, or a  
15 federal correctional facility, or whether committed from another  
16 state or the federal government and serving a sentence in a state  
17 correctional facility:

18       (a) Log books or other daily reports of the rounds made by  
19 employees of the department, or any other form of daily record  
20 made by employees of the department for the purpose of apprising  
21 one another, or apprising other departmental employees, of events  
22 taking place in a correctional facility.

23       (b) Staffing charts or daily assignment sheets, or other  
24 record of the duty assignments of correctional officers or other  
25 departmental employees, the release of which would threaten the  
26 security of a correctional facility.

1 (c) Critical incident reports, records of violent or  
2 dangerous incidents, or records of any other incidents, the  
3 release of which would threaten the security of a correctional  
4 facility.

5 (d) Records pertaining to a civil action involving the  
6 department, its employees, or the FORMER commission OF  
7 CORRECTIONS.

8 (e) Records of any meeting of employees or officers of the  
9 department. This subdivision does not apply to records of meet-  
10 ings of the FORMER commission OF CORRECTIONS, which shall remain  
11 public records that are subject to disclosure to the extent  
12 allowed, and in the manner provided, in the freedom of informa-  
13 tion act, or the open meetings act.

14 (f) Periodic reports made to the FORMER commission OF  
15 CORRECTIONS or THE department by wardens or other departmental  
16 officers or employees.

17 (g) Home addresses, phone numbers, and personnel records of  
18 employees of the department.

19 (2) Notwithstanding subsection (1), information or records  
20 in the possession of the ~~commission or~~ department that contain  
21 the name of a prisoner, or that contain a number or other desig-  
22 nation intended to identify a particular prisoner, shall be  
23 subject to disclosure to that prisoner to the extent allowed, and  
24 in the manner provided, in the freedom of information act.

25 (3) A public record in the possession of the department ~~or~~  
26 ~~commission~~ that is not exempted from disclosure under subsection  
27 (1), and that does not pertain specifically to the requesting

1 prisoner as prescribed in subsection (2), shall be subject to  
2 disclosure to a prisoner to the extent allowed, and in the manner  
3 provided, in the freedom of information act, except that the  
4 waiver of the first \$20.00 of the fee for copying a public  
5 record, as prescribed in section 4(1) of the freedom of informa-  
6 tion act, being section 15.234 of the Michigan Compiled Laws,  
7 shall not apply to that request.

8       (4) The home addresses, phone numbers and personnel records  
9 of department employees and employees of the center for forensic  
10 psychiatry are exempt from disclosure under the freedom of infor-  
11 mation act.

12       (5) As used in this section:

13       (a) "Freedom of information act" means Act No. 442 of the  
14 Public Acts of 1976, being sections 15.231 to 15.246 of the  
15 Michigan Compiled Laws.

16       (b) "Open meetings act" means Act No. 267 of the Public Acts  
17 of 1976, being sections 15.261 to 15.275 of the Michigan Compiled  
18 Laws.

19       Sec. 38. (1) Each prisoner on parole shall remain in the  
20 legal custody and under the control of the ~~commission~~  
21 DEPARTMENT. The deputy director of the bureau of field services,  
22 upon a showing of probable violation of parole, may issue a war-  
23 rant for the return of any paroled prisoner. Pending a hearing  
24 upon any charge of parole violation, the prisoner shall remain  
25 incarcerated.

26       (2) A prisoner violating the provisions of his or her parole  
27 and for whose return a warrant has been issued by the deputy

1 director of the bureau of field services shall be treated as an  
2 escaped prisoner and shall be liable, when arrested, to serve out  
3 the unexpired portion of his or her maximum imprisonment. The  
4 time from the date of the declared violation to the date of the  
5 prisoner's availability for return to an institution shall not be  
6 counted as time served. The warrant of the deputy director of  
7 the bureau of field services shall be a sufficient warrant autho-  
8 rizing all officers named in the warrant to detain the paroled  
9 prisoner in any jail of the state until his or her return to the  
10 state penal institution.

11 (3) If a paroled prisoner fails to return to prison when  
12 required by the deputy director of the bureau of field services  
13 or if the paroled prisoner escapes while on parole, the paroled  
14 prisoner shall be treated in all respects as if he or she had  
15 escaped from prison and shall be subject to be retaken as pro-  
16 vided by the laws of this state.

17 (4) The parole board, in its discretion, may cause the for-  
18 feiture of all good time OR DISCIPLINARY CREDITS to the date of  
19 the declared violation.

20 (5) A prisoner committing a crime while at large on parole  
21 and being convicted and sentenced for the crime shall be treated  
22 as to the last incurred term as provided under section 34.

23 (6) A parole shall be construed as a permit to the prisoner  
24 to leave the prison, and not as a ~~release~~ DISCHARGE. While ~~at~~  
25 ~~large, the paroled~~ ON PAROLE, THE prisoner shall be considered  
26 to be serving out the sentence imposed by the court and shall be

1 entitled to good time OR DISCIPLINARY CREDITS the same as if  
2 confined in prison.

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

4       (a) "Holding cell" means a cell or room in a facility of a  
5 local unit of government that is used for the detention of 1 or  
6 more persons awaiting processing, booking, court appearances,  
7 transportation to a jail or lockup, or discharge for not to  
8 exceed 12 hours.

9       (b) "Holding center" means a facility that is operated by a  
10 local unit of government for the detention of persons awaiting  
11 processing, booking, court appearances, transportation to a jail  
12 or lockup, or discharge; for not to exceed 24 hours.

13       (c) "Jail" means a facility that is operated by a local unit  
14 of government for the detention, FOR NOT MORE THAN 1 YEAR, of  
15 persons charged with, or convicted of, criminal offenses or ordi-  
16 nance violations; OR persons found guilty of civil or criminal  
17 contempt. ~~, or a facility which houses prisoners pursuant to an~~  
18 ~~agreement authorized under Act No. 164 of the Public Acts of~~  
19 ~~1961, being sections 802.1 to 802.21 of the Michigan Compiled~~  
20 ~~Laws, for not more than 1 year.~~

21       (d) "Local unit of government" means any county, city, vil-  
22 lage, township, charter township, community college, college, or  
23 university.

24       (e) "Lockup" means a facility that is operated by a local  
25 unit of government for the detention of persons awaiting process-  
26 ing, booking, court appearances, or transportation to a jail, for  
27 not to exceed 72 hours.

1 (f) "State correctional facility" means a facility or  
2 institution maintained and operated by the department.

3 (2) State correctional facilities shall be administered by  
4 the bureau of prisons.

5 (3) The department shall supervise and inspect jails and  
6 lockups that are under the jurisdiction of the county sheriff to  
7 obtain facts concerning the proper management of the jails and  
8 lockups and their usefulness. The department shall promulgate  
9 rules and standards promoting the proper, efficient, and humane  
10 administration of jails and lockups that are under the jurisdic-  
11 tion of the county sheriff pursuant to the administrative proce-  
12 dures act of 1969, Act No. 306 of the Public Acts of 1969, being  
13 sections 24.201 to ~~24.315~~ 24.328 of the Michigan Compiled  
14 Laws.

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

17 (5) Except as provided in subsection (3), the department  
18 shall not supervise and inspect, or promulgate rules and stan-  
19 dards for the administration of, holding cells, holding centers,  
20 or lockups. However, the department shall provide advice and  
21 services concerning the efficient and humane administration of  
22 holding cells, holding centers, and lockups at the request of a  
23 local unit of government.

24 (6) The ~~commission~~ DEPARTMENT may enforce any reasonable  
25 order with respect to jails and lockups subject to supervision  
26 and inspection pursuant to subsection (3) through mandamus or  
27 injunction in the circuit court of the county where the jail is

1 located through proceedings instituted by the attorney general on  
2 behalf of the ~~commission~~ DEPARTMENT.

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

5 (8) The sheriff or the administrator of a jail or lockup,  
6 subject to supervision and inspection under subsection (3), shall  
7 admit to the jail or lockup ~~any member of the commission~~ THE  
8 DIRECTOR or an authorized designee of the ~~commission~~ DIRECTOR,  
9 for the purpose of visitation and inspection.

10 (9) The sheriff or the administrator of a jail or lockup  
11 subject to supervision and inspection under subsection (3) shall  
12 keep records of a type and in a manner reasonably prescribed by  
13 the ~~commission~~ DEPARTMENT. The ~~commission~~ DEPARTMENT shall  
14 provide the forms required for keeping the records.

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

17 Sec. 65. (1) Under rules promulgated by the director of the  
18 department, ~~with the approval of the commission,~~ the  
19 ~~assistant~~ DEPUTY director in charge of the bureau of ~~penal~~  
20 ~~institutions~~ CORRECTIONAL FACILITIES, except as provided in  
21 subsection (2), may cause the transfer or re-transfer of a pris-  
22 oner from a penal institution to which committed to any other  
23 penal institution, or temporarily to a state institution for med-  
24 ical or surgical treatment. In effecting a transfer, the  
25 ~~assistant~~ DEPUTY director of the bureau of ~~penal institutions~~  
26 CORRECTIONAL FACILITIES may utilize the services of an executive



1 or employee within the department and of a law enforcement  
2 officer of the state.

3       (2) As used in this section, "offender" means a citizen of  
4 the United States or a foreign country who has been convicted of  
5 a crime and been given a sentence in a country other than the  
6 country of which he or she is a citizen. If a treaty is in  
7 effect between the United States and a foreign country, which  
8 provides for the transfer of offenders from the jurisdiction of  
9 of the countries to the jurisdiction of the country of which the  
10 offender is a citizen, and if the offender requests the transfer,  
11 the governor of this state or a person designated by the governor  
12 may give the approval of this state to a transfer of an offender,  
13 if the conditions of the treaty are satisfied.

14       (3) Not less than 45 days before approval of a transfer pur-  
15 suant to subsection (2) from this state to another country, the  
16 governor, or the governor's designee, shall notify the sentencing  
17 judge and the prosecuting attorney of the county having original  
18 jurisdiction, or their successors in office, of the request for  
19 transfer. The notification shall indicate any name changes of  
20 the offender subsequent to sentencing. Within 20 days after  
21 receiving such notification, the judge or prosecutor may send to  
22 the governor, or the governor's designee, information about the  
23 criminal action against the offender or objections to the  
24 transfer. Objections to the transfer shall not preclude approval  
25 of the transfer.

26       Sec. 66. For the purpose of classification, all convicted  
27 prisoners shall be committed by courts of criminal jurisdiction

1 of the state, to the ~~commission~~ DEPARTMENT, at a place to be  
2 designated by the ~~commission~~ DEPARTMENT.

3       Sec. 67. (1) Quarters for temporary confinement apart from  
4 those of regular inmates shall be provided for convicted prison-  
5 ers upon commitment at each of the state correctional facilities,  
6 which the ~~commission~~ DIRECTOR shall designate as a reception  
7 center. Within 60 days after the arrival of a convicted prisoner  
8 at such a state correctional facility, the classification commit-  
9 tee shall make and complete a comprehensive study of the prison-  
10 er, including physical and psychiatric examinations, to ensure  
11 that the prisoner is confined in the state correctional facility  
12 suited to the type of rehabilitation required in his or her  
13 case. The warden of the state correctional facility shall  
14 deliver a report of the study of the classification committee to  
15 the deputy director in charge of the bureau of correctional  
16 facilities, who shall, within 5 days after receipt of the report,  
17 execute an order to confine the prisoner in the state correc-  
18 tional facility determined as suitable by the deputy director.

19       (2) Immediately upon arrival at a reception center desig-  
20 nated pursuant to subsection (1), each incoming prisoner shall  
21 undergo a test for HIV or an antibody to HIV. This subsection  
22 shall not apply if an incoming prisoner has been tested for HIV  
23 or an antibody to HIV under section 5129 of the public health  
24 code, Act No. 368 of the Public Acts of 1978, being section  
25 333.5129 of the Michigan Compiled Laws, within the 3 months imme-  
26 diately preceding the date of the prisoner's arrival at the

1 reception center, as indicated by the record transferred to the  
2 department by the court under that section.

3       (3) If a prisoner receives a positive test result, and is  
4 subsequently subject to discipline by the department for sexual  
5 misconduct that could transmit HIV, illegal intravenous use of  
6 controlled substances, or assaultive or predatory behavior that  
7 could transmit HIV, the department shall house that prisoner in  
8 administrative segregation, an inpatient health care unit, or a  
9 unit separate from the general prisoner population, as determined  
10 by the department.

11       (4) The department shall report each positive test result to  
12 the department of public health.

13       (5) If an employee of the department is exposed to the blood  
14 or body fluid of a prisoner by that prisoner in a manner that  
15 could transmit HIV, the prisoner shall be tested for HIV or an  
16 antibody to HIV. If the prisoner refuses to undergo the test, he  
17 or she shall be considered by the department to be HIV positive.

18       (6) Upon the request of an employee of the department, the  
19 department shall provide or arrange for a test for HIV or an  
20 antibody to HIV for that employee, free of charge.

21       (7) Upon the request of an employee of the department, the  
22 department shall provide to that employee the equipment necessary  
23 to implement universal precautions to prevent transmission of HIV  
24 infection.

25       (8) A prisoner who receives a positive HIV test result or  
26 who is considered by the department to be HIV positive pursuant

1 to this section shall not work in a health facility operated by  
2 the department.

3 (9) The department shall conduct a seroprevalence study of  
4 the prisoners in all state correctional facilities to determine  
5 the percentage of prisoners who are HIV infected.

6 (10) The results of a test for HIV or an antibody to HIV  
7 conducted under this section shall be disclosed by the department  
8 only to persons who demonstrate to the department a need to know  
9 the test results, and as otherwise provided in subsection (4).

10 (11) The deputy director in charge of the bureau of correc-  
11 tional facilities shall take steps to ensure that all prisoners  
12 who receive HIV testing receive counseling regarding acquired  
13 immunodeficiency syndrome and acquired immunodeficiency syndrome  
14 related complex, including, at a minimum, treatment, transmis-  
15 sion, and protective measures.

16 (12) The department, in conjunction with the department of  
17 public health, shall develop and implement a comprehensive AIDS  
18 education program designed specifically for correctional  
19 environments. The program shall be conducted by the bureau  
20 within the department responsible for health care, for staff and  
21 for prisoners at each state correctional facility.

22 (13) Two years after the effective date of the amendatory  
23 act that added this subsection, the department shall submit a  
24 report regarding the testing component, managerial aspects, and  
25 effectiveness of subsections (2) to (12) to the senate and house  
26 committees with jurisdiction over matters pertaining to

1 corrections, and to the senate and house committees with  
2 jurisdiction over matters pertaining to public health.

3 (14) As used in this section:

4 (a) "AIDS" means acquired immunodeficiency syndrome.

5 (b) "HIV" means human immunodeficiency virus.

6 (c) "Positive test result" means a double positive  
7 enzyme-linked immunosorbent assay test, combined with a positive  
8 western blot assay test, or a positive test under an HIV test  
9 that is considered reliable by the federal centers for disease  
10 control and is approved by the department of public health.

11 Section 2. Section 82 of Act No. 232 of the Public Acts of  
12 1953, being section 791.282 of the Michigan Compiled Laws, is  
13 repealed.

14 Section 3. This amendatory act shall not take effect unless  
15 Senate Bill No. \_\_\_\_\_ or House Bill No. 5150 (request  
16 no. 03623'89) of the 85th Legislature is enacted into law.