



**House
Legislative
Analysis
Section**

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NO PRISON PAT DOWN SEARCH BY OTHER SEX

House Bill 4868 as introduced
First Analysis (12-11-89)

Sponsor: Rep. Margaret O'Connor
Committee: Corrections

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THE APPARENT PROBLEM:

Those who wish to visit relatives or friends in any of the state's prisons must of necessity be searched for weapons, drugs, or any other items that could be hidden on a visitor's body or clothing and passed on to prisoners. While this has always been considered an unpleasant experience, some visitors have complained that the experience is made more embarrassing and demeaning when they are searched by members of the opposite sex, and some claim that there are prison personnel who are "unprofessional" in their conduct, and use the search as form of harassment. Fearing retaliation against the person they wish to visit, many refrain from complaining to prison authorities. One solution to this problem would be to require that searches be conducted only by members of the same sex. Although this is, in fact, recommended in Department of Corrections regulations, the department has not put it into effect, and it is felt that legislation is needed to make sure this is established as department policy.

require that the Department of Corrections either schedule its personnel to have one female and one male corrections officer at each prison's visitors' gate during all visiting hours, or, since some two-thirds of all visitors in prisons are female, having one female officer at the gate, and one male officer "on call" for the few male visitors. The former schedule poses logistical problems. At the Chippewa facility, for example, there are 15 female officers and 169 male officers who are rotated in three shifts per day, seven days per week schedules. The result would be that most of the female officers would be moved out of positions that traditionally lead to promotions and would spend the majority of their workdays at the visitors' gate position. The second schedule could result in a position that would be classified as "female only," which is against affirmative action rules.

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THE CONTENT OF THE BILL:

The bill would amend the Department of Corrections act to require that "pat down searches" of visitors to state correctional facilities be performed only by members of the same sex as the person being searched. ("Pat down search" is defined under the bill to mean 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.) Under the bill, a visitor could not be subjected to a pat down search unless every person present were of the same sex, and Department of Corrections' employees who performed or assisted in a search in violation of this requirement would be guilty of a misdemeanor, punishable by a fine of not more than \$50.

POSITIONS:

The Michigan Council on Crime and Delinquency supports the bill. (12-8-89)

The Department of Corrections has no position on the bill. (12-8-89)

The Michigan Corrections Organization/SEIU Local 526M has no position on the bill. (12-8-89)

MCL 791.269a

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

If there are, as some have claimed, corrections officers who use pat down searches to humiliate visitors, the bill would help eliminate that problem by its requirement that every person performing a pat down search be the same sex as the person being searched. In any case, this requirement should be a basic right of all who visit in prisons. No person should be subjected to the position of being at the mercy of prison personnel under the circumstances now permitted.

Against:

Unless there were an equal number of male and female corrections officers at each corrections' facility, the bill would simply trade one inequity for another. The bill would