



**House
Legislative
Analysis
Section**

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NO PRISON PAT DOWN SEARCH BY OTHER SEX

House Bill 4868 as enrolled
Second Analysis (4-10-90)

RECEIVED

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Sponsor: Rep. Margaret O'Connor
House Committee: Corrections
Senate Committee: Criminal Justice and Urban Affairs

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.

THE CONTENT OF THE BILL:

The bill would amend the Department of Corrections act to provide that a visitor to a state correctional facility could not be subjected to a "pat down search" unless every person performing or assisting in performing the search were 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 would have the option of signing a waiver to this requirement if the necessary personnel were not readily available.

MCL 791.269a

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on the state. (4-10-90)

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 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

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.

Response: In some instances, at some prisons, there may be times when the department would have to work out logistical problems. The department, however, should be able to arrange visiting hours to coincide with shift schedules that allow for necessary male/female staff ratios, without great difficulty. Further, the number of female employees has increased dramatically in the past two or three years. While having an adequate number of female staff may have been a problem in the past, it should not be a problem now or in the future.

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