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BILL ANALYSIS

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Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 15 (as enrolled)

PUBLIC ACT 168 of 1989

Sponsor: Senator Jack Welborn

Senate Committee: Criminal Justice and Urban Affairs

First House Committee: Corrections

Second House Committee: Appropriations

Date Completed: 9-6-89

RATIONALE

According to the Department of Corrections (DOC), the privilege of prisoners in the State's correctional facilities to maintain personal property in their cells poses both management and security problems. The DOC has attempted to implement policies, first through internal policy directives passed by the Corrections Commission and later through emergency rules signed by the Governor, that would limit the amount of personal property that prisoners could possess. These attempts were halted, however, when the Ingham County Circuit Court enjoined the personal property provisions of the policy directives, which were challenged in a pending class-action suit brought by inmates (Cain et al. v Michigan Department of Corrections). (Reportedly, the DOC has agreed not to implement the emergency rules, either, until the court case is concluded.) Some people believe that the property-limiting policies should be implemented and that specifying those policies in statute would give them the force of law necessary to overcome the current legal challenge against them.

would be placed on prisoners' possession of personal property.

A prisoner in a correctional facility with a "security designation" of IV could keep one set of personal clothing in his or her living area and could wear that clothing for court appearances or during visits. The DOC would have to provide civilian clothing to a prisoner in a facility that had a designation of V or VI for jury trials or as ordered by the court for court appearances. A prisoner in a correctional facility that had a level I, II, or III designation, however, could wear or have personal clothing in his or her living area.

A prisoner's personal property, including clothing, could not exceed that which could be contained in one duffel bag or one footlocker for a prisoner in a facility having a level IV, V, or VI designation; or, for a prisoner in a facility having a level I, II, or III designation, one duffel bag and one footlocker. A prisoner could possess excess property, however, if it consisted of legal materials not available in the institutional law library to which the prisoner had access. ("Access" would not mean that a prisoner had to be allowed physical access to a law library.) The bill would not allow the possession of personal property of a type otherwise prohibited by the DOC.

S.B. 15 (9-6-89)

CONTENT

The bill would amend Public Act 118 of 1893, which provides for the operation of State prisons, to specify restrictions that

The DOC would have to begin phasing in the bill's requirements 30 days after its effective date, and would have to implement them fully for security designations V and VI by January 1, 1990, and for security designation IV by January 1, 1991. "Personal clothing" would mean any clothing that was not a uniform or standardized clothing issued by the DOC. "Security designation" would mean one of six levels of restrictiveness as determined by the Department, with level I being the least restrictive and level VI being the most restrictive.

Proposed MCL 800.42

FISCAL IMPACT

The bill would have no fiscal impact on the State in FY 1988-89 due to a combination of the 30-day implementation delay provision and the likely enactment date. The fiscal impact on the State would be a cost of \$44,100 to \$147,400 in FY 1989-90, and \$54,500 to \$252,400 in FY 1990-91. The annual cost to the State after FY 1990-91 would be \$240,000-\$270,000 depending on the number of prisoners in security classifications IV, V and VI, prisoner turnover in those security levels and cost of the prison uniform. The bill has no fiscal implications for local government.

The projected fiscal implications are based on the following assumptions:

- The current cost to provide a prisoner with a third uniform is \$31.48. This cost is held constant through FY 1990-91.
- Each prisoner with a security classification of IV, V and VI will receive a new uniform annually.
- 25% of the prisoners classified IV, V, and VI will be reclassified to a lower classification level annually with a new prisoner being assigned to the vacated bed.
- The projected prison population figures are based on the Department's June 8, 1989, projection report.
- Correctional facilities' rated capacities on January 1, 1990, and January 1, 1991,

- are based on the Department's June 8, 1989, facility construction schedule.
- The percentage of projected total prisoners classified maximum security (V and VI) and close security (IV) is based on the August 4, 1989, percentages (maximum 4.7% and close 11.4%).
- Implementation of the security level IV uniforms can occur during FY 1989-90.
- For FY 1989-90, class V and VI prisoners must have uniforms by January 1, 1990 ($1,400 \times \$31.48 = \$44,072$). Security class IV prisoners can be put in uniforms during FY 1989-90 ($4,683 \times \$31.48 = \$147,421$).
- For FY 1990-91, all security class V and VI prisoners need to receive a replacement uniform ($1,730 \times \$31.48 = \$54,460$). Security class IV prisoners will require a replacement uniform if the initial uniform is mandated during FY 1990-91 ($4,683 \times \$31.48 = \$147,421$). Further, prisoners rotated into security classes IV, V and VI during FY 1990-91 will require a uniform ($6,413 \times .25 \times \$31.48 = \$50,470$).
- The larger of the numbers--population or rated capacity--is selected. The following table highlights the projected prisoner population and rated bed capacity for both of the January dates:

ANALYSIS OF PRISONER CLASSIFICATION

	<u>January 1, 1990</u>		<u>January 1, 1991</u>	
	<u>Projected</u>	<u>Rated</u>	<u>Projected</u>	<u>Rated</u>
	<u>Census^a</u>	<u>Capacity^b</u>	<u>Census^a</u>	<u>Capacity^b</u>
Maximum	1,400	930	1,574	1,730
Close	<u>3,398</u>	<u>3,915</u>	<u>3,817</u>	<u>4,683</u>
TOTAL	4,798	4,845	5,391	6,413

a Based on Department of Corrections June 8, 1989, population projection report with 4.7% maximum and 11.4% close.

b Based on Department of Corrections new facility on-line report dated June 8, 1989.

ARGUMENTS

Supporting Argument

Limiting the amount and types of personal property that prisoners can keep in their cell is a security and management issue: the more items allowed in a cell, the greater the potential for hidden contraband and make-shift weapons. The necessity to oversee all of the various items in a prisoner's cell, and to search them in the event of "shake down", results in more time demands on and greater potential danger to prison staff. The bill would allow corrections officers and other staff to be more effective in enforcing DOC policies, overseeing prisoners, and protecting themselves and other inmates.

Response: Restricting prisoners' personal property privileges is unnecessary: security and management concerns can be addressed through more effective enforcement of current DOC policies.

Supporting Argument

The DOC policies and living arrangement in prisons should be more severe for those in higher security facilities, and there should be incentives for prisoners to earn decreases in their security designation levels. By allowing prisoners to possess more property in lower

security designations, and imposing greater property restrictions for prisoners in higher designations, the bill would provide those incentives.

Response: The property restrictions proposed in the bill (and in the enjoined policy directives and emergency rules) are far more stringent than anything currently imposed for all security levels. In effect, rather than providing incentives, the bill would punish all prisoners, regardless of prior behavior or security designations, since possession privileges would be curtailed across the board.

Supporting Argument

The delay in implementing the property restriction policies is holding up the DOC's plan to begin operating its first level VI (often referred to as "supermax") facility at the Ionia Correctional Facility for prisoners who represent the most serious security risk. An integral part of an effective supermax facility is the limitation of privileges such as possessing personal property and wearing personal clothes.

Response: The implementation of a supermax facility in Ionia is not necessarily contingent upon the enjoined policy directives. Indeed, the challenge to the proposed policies reportedly was underway for several months before the DOC even brought up any

connection to supermax.

Opposing Argument

Restricting the personal property privileges of all prisoners could be a violation of their rights to due process of law. This issue has yet to be resolved, as a class action suit challenging the DOC's policy directives is pending before the Ingham County Circuit Court. Those policies should not be enacted while legal challenges to them remain unresolved. Further, simply codifying the policies would not cure any constitutional deficiencies.

Opposing Argument

The claim that allowing prisoners to keep personal property in their cell leads to greater violence and other disruptions is unfounded. Although the proposed property restrictions have not been implemented, there was a dramatic decrease in prisoner-on-prisoner assaults last year (693 in 1987 and 491 in 1988), at the same time that prison population was increasing by 16%. In addition, the two recent murders of corrections officers are attributable not to personal property privileges, but to noncompliance with departmental policy and professional standards.

Response: According to the DOC, last year's reduction in assaults is directly attributable to increased staffing and security measures. Since prison populations continue to swell beyond original projections and new prison construction is not keeping pace, though, security problems will continue to surface periodically. Rather than wait for them to arise, the potential for problems should be addressed now. It makes sense to limit prisoners' nonessential property that can be used to hide weapons or drugs.

Opposing Argument

The bill makes no provision for storage of property on a permanent basis for those prisoners who have no home to which they can return excess property. Further, according to the DOC's policy directives, "prisoners who are required to reduce their personal property because of an increased custody transfer and who are unwilling or unable to dispose of it shall have their property deemed abandoned". Since a grievance procedure can take from 60

to 90 days, a prisoner who appealed an increased custody transfer would probably lose the property in question even if the proposed transfer turned out to be a violation of Department policy, since neither the bill nor the policy directive would make any provision for storage of disputed property.

Opposing Argument

To those in prison, personal property can be the one remaining aspect of their lives that gives them a sense of self. For some, especially those facing long terms of incarceration, being forced to part with some of their property could be unnecessarily disruptive.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.