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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 915 (Substitute S-2 as passed by the Senate)
Senate Bill 916 (Substitute S-2 as passed by the Senate)
House Bill 5542 (Substitute S-1 as reported)
Sponsor: Senator Jack Welborn (Senate Bill 915)
Senator Nick Smith (Senate Bill 916)
Representative Gregory E. Pitoniak (House Bill 5542)
House Committee: Towns and Counties (House Bill 5542)
Senate Committee: Criminal Justice and Urban Affairs

Date Completed: 6-13-90

RATIONALE

Michigan's prisons are more overcrowded than ever before, despite a massive prison construction effort, begun in 1985, to attempt to alleviate the problem. While the State has spent approximately \$900 million to add 10,808 beds to the prison system in the last five years, prison commitments have grown at an even more rapid rate. As of February 9, 1990, the Department of Corrections (DOC) Bureau of Correctional Facilities was housing 4,500 more prisoners than its rated design capacity, a level of overcrowding that is 180% higher than before the State embarked on the construction program. DOC forecasts project that, by October 1, 1992, the State prison system will be 35.9%, or 17,379 prisoners over rated design capacity, and this does not include another 5,760 prisoners now being housed in so-called "temporary" facilities. In addition, many of Michigan's county jails continue to struggle with overcrowding problems of their own. Since the jail overcrowding emergency powers Act took effect in 1983, at least 31 counties have triggered that Act's early release provision on a total of over 200 occasions.

DOC figures show that, over the five-year period of prison construction, the number of prisoners sentenced to over 24 months' imprisonment has remained relatively constant. The primary cause of the large increase in prison overcrowding rates has been the rapid growth of the number of prison commitments of individuals who receive minimum sentences

of up to 12 months. The number of people receiving sentences of 13-24 months also is up. Since a large number of county jails are overcrowded (with 30% of county jails operating at 100%-125% of capacity, and six jails over that mark as of October 1, 1989, according to the Michigan Sheriffs' Association), it appears that criminals who otherwise would have been committed to jails are being sent, instead, to the DOC, thereby exacerbating its overcrowded conditions.

In order to alleviate the combined overcrowding problems of Michigan's jails and prisons, and to expand and coordinate the use of community alternatives to imprisonment, many have advocated a new integrated approach between the State and counties to the funding, administration, and operation of both State and community corrections programs in Michigan.

CONTENT

Senate Bills 915 (S-2) and 916 (S-2) would create the "Comprehensive Community Corrections Program Act" and the "Community Corrections Complex Act", respectively, to provide for the housing of certain State prisoners in county correctional facilities and to provide for the creation and operation of community corrections complexes. The bills are tie-barred.

House Bill 5542 (S-1) would amend the Code of Criminal Procedure to provide that a commitment or sentence of one year or less would have to be served in a "county jail, minimum security camp, community corrections complex, or a combination of those facilities, in the county in which the person was convicted". Under current law, such sentences must be served in the jail of the county in which the person is convicted. Similarly, the bill would allow imprisonment for up to 12 months, as a condition of parole, in any of those types facilities rather than only in a county jail, as under current law. The bill is tie-barred to Senate Bills 915 and 916.

A more detailed description of Senate Bills 915 and 916 follows.

Senate Bill 915 (S-2)

Funding Agreements

Beginning on October 1, 1990, the Department of Corrections would have to provide funding to a county that chose to enter into an agreement under the bill for the housing of State prisoners transferred to that county. Such an agreement would have to provide for all of the following:

- Procedures for the payment of State funds and reporting procedures regarding the county's use of those funds.
- Procedures and responsibilities pertaining to the housing of State prisoners in county facilities, including the county sheriff's right to refuse to accept a prisoner or return a prisoner to the DOC.
- The services and programs required to be provided by the county to State prisoners, including medical care.
- State indemnification for civil liability.
- Any other provisions considered necessary by the DOC for the funding, construction, and operation of a community corrections complex or the transfer and housing of State prisoners in county correctional facilities.

Funding could be granted to a county for housing prisoners who had a minimum sentence of up to 24 months and who

previously had been committed to the DOC from that county. Funding also could be granted for the housing of prisoners under the DOC's jurisdiction who had a minimum sentence of more than 24 months, but such prisoners could not be transferred unless all of the following conditions were met:

- The county had not exceeded the bill's percentage limitations on commitments of State prisoners.
- The number of maximum security beds available for others in the county jail was more than 10% of the jail's rated capacity.
- The prisoners were transferred to the county for at least 90 days in groups of five or more.
- The county implemented a prisoner security classification instrument approved by the "State Office of Community Alternatives", created by the Community Corrections Act. (Note: The name of the office within the DOC is the "Office of Community Corrections".)

Reimbursement

The DOC would have to reimburse counties for housing prisoners in county correctional facilities at the rate of \$25 per day for a prisoner committed to the DOC's jurisdiction whose minimum sentence was no more than 12 months; \$40 per day for a prisoner whose minimum sentence was more than 12, but less than 24, months; and \$45 per day for a prisoner whose minimum sentence was more than 24 months. If a State prisoner were housed in a community corrections complex owned and operated by two or more counties, the DOC could apportion the reimbursement among those counties.

If a county, in any year, committed to the DOC's jurisdiction more than 5% of the number of people convicted in the county of an offense punishable by more than one year's imprisonment who received a minimum sentence of less than one year, or more than 15% of those same offenders who received a minimum sentence of more than 12 but less than 24 months, the county's reimbursement would have to be reduced by an amount equal to the total number of those offenders multiplied by \$40 per day. Such a reduction,

however, could not result in a reimbursement owed by a county to the State.

Reimbursement amounts paid to a county would have to be used to operate and maintain county correctional facilities and to enhance and increase the county's community corrections expenditures, including criminal detection, investigation, and apprehension. Reimbursements could not supplant any part of the county's revenue spent for community corrections at the level established as of January 1, 1989, including expenditures for the county sheriff, courts, prosecution, and county correctional facilities.

Transfer, Housing, and Care

A county sheriff could refuse to accept any State prisoner, and could return a State prisoner to the DOC for disciplinary reasons. A prisoner returned to the DOC for disciplinary reasons whose minimum sentence was no more than 24 months would be counted for purposes of the percentage limitations detailed above. The procedure for a sheriff's review of prisoners proposed for transfer to a county and the reasons for which a sheriff could refuse a transfer or return a prisoner would have to be included in the agreement between the county and the DOC. A prisoner returned to the DOC for any reason other than to receive medical or mental health services could not be eligible for subsequent placement in a county correctional facility.

The DOC would have to provide all nonroutine medical care for State prisoners, or reimburse the county for doing so. The county would have to provide, or pay for the provision of, all routine medical and health care. Services that constituted nonroutine medical services would have to be determined in the agreement between the county and the Department.

The DOC, on behalf of the State, would have to agree to indemnify the county against civil damages arising out of acts or omissions of the DOC, the Office, or a State prisoner in connection with the transfer or housing of State prisoners. The terms and extent of indemnification would have to be specified in the agreement between the Office and the county, and the bill provides that it would not confer any liability on the State beyond that

stated in the agreement.

Senate Bill 916 (S-2)

Funding of Complexes

Beginning October 1, 1990, the State would have to provide funding for the construction, purchase, or renovation of community corrections complexes. The Office of Community Alternatives would have to enter into agreements with a county or counties that provided for all of the following:

- The integration and implementation of State and local community corrections programs through a community corrections complex and other facilities.
- Procedures pertaining to the payment of State funds and reporting procedures regarding those funds.
- Design and construction specifications for a community corrections complex, and the county's ownership and maintenance responsibilities.
- The costs, fees, or penalties for which the State would be liable in the case of nonpayment or late payment of State funds.
- Any other provisions that the Office considered necessary for the construction, funding, and operation of a community corrections complex.

The Office could not enter into an agreement with a county that had not submitted to the Office, and received approval of, a comprehensive corrections plan pursuant to the Community Corrections Act. An agreement could not last longer than 20 years and would not affect the DOC's authority to supervise, inspect, and approve jail facilities.

In order to be eligible for funding, a community corrections complex would have to be approved by the Office on or after one year before the bill's effective date, but no later than September 30, 1992. If approval were gained by September 30, 1991, the State would have to pay for 100% of the construction, purchase, or renovation costs. If approval were gained after that date but no later than October 31, 1992, the State would have to provide 50% of those costs.

If the Office determined that a county could provide funding by means of long-term borrowing, that method would have to be used, with the State providing the costs of construction, purchase, or renovation by paying the debt obligations. If the county could not provide long-term borrowing, the State would have to fund the project directly.

Two or more counties could construct, purchase, or renovate a community corrections complex for their combined use. The Office would have to encourage such arrangements. The county or counties proposing a joint project would have to provide a suitable building site and utility service to the site.

Design and Operation

A community corrections complex would have to be designed and built according to specifications in the agreement between the Office and the county or counties building, purchasing, or renovating a complex. Beds in a complex would have to be apportioned according to the agreement among the following classes of prisoners, probationers, and inmates:

- State prisoners who were transferred to county correctional facilities under the proposed "Comprehensive Community Corrections Program Act" (Senate Bill 915), and whom the counties determined could be appropriately placed in a community corrections complex.
- Persons serving a term of probation under intensive supervision following special alternative incarceration (the "boot camp" program for young offenders).
- Probationers housed under the Office's probation residential program.
- County jail inmates.

A comprehensive corrections plan for a county or counties for which a community corrections complex was approved would have to provide administrative office and program space for the integration and delivery of community-based corrections programs, including minimum security work programs, the Office's probation residential program, the electronic tether program, intensive probation, alcohol and substance abuse treatment, offender

rehabilitation, employment training, and other related counseling and education programs.

A community corrections complex would be the property of the county or counties that built, purchased, or renovated it, and those entities would be responsible for maintaining the facility. In order to assist counties in planning the construction of community corrections complexes, the DOC and the Office would have to develop and make available prototype facility plans. Each plan would have to include an option for the use of modular units.

State Responsibilities

The bill provides that if the State failed to make payments associated with construction, purchase, or renovation as agreed to, or were late in making such payments, the State would be liable for penalties of 16% of the overdue balance, the county's reasonable attorney fees and court cost resulting from the State's failure or tardiness, and any other penalties or costs stated in the agreement. An action by a county against the State in this regard would have to be brought in the Court of Claims.

The bill specifies that a project funded by means of long-term borrowing by a county would not be a State project and would not require payment of the "prevailing wage" under Public Act 166 of 1965. A project funded by direct State funding would be a State project and require payment of the prevailing wage.

FISCAL IMPACT

The bills would have no fiscal impact on either the State or local government during FY 1989-90.

On a full-year basis with 100% county participation, the legislation would reduce State GF/GP expenditures by \$64.6 million and result in a \$16.4 million net revenue increase to local government. Based on 67% first-year phase-in, the State would realize a \$43-\$45 million GF/GP expenditure reduction, and local government would realize a net revenue increase of \$10.5-\$11.5 million. Complete details of the program and fiscal analysis are contained in a separate publication, "Senate Proposal for a Comprehensive State/County Community-Based Corrections Program" by

Senators Nick Smith and Jack Welborn, of March 1990.

ARGUMENTS

Supporting Argument

The bills would use an innovative approach to attempt to reduce the overpopulation of Michigan's prison system by providing economic incentives to counties to accept the responsibility of incarcerating certain prisoners. Since the growth in new prison commitments in recent years has been concentrated primarily among criminals given short-term sentences, it stands to reason that an effective program for diverting those individuals would go a long way toward alleviating the continuing overcrowding problem experienced by the State's prison system. In addition, dedicating State funding to construction or renovation projects and providing diversion reimbursements not only would encourage counties to participate in the program, but also would enable them to relieve their own overcrowded jail conditions.

Supporting Argument

The bills would provide the resources and opportunity for more efficient and expanded uses of county correctional facilities. Counties currently have an abundance of maximum security facilities, but house mostly minimum and medium security prisoners. The bills would provide for capital outlay funding for the construction of lower-cost minimum security jails, thereby making the existing maximum security beds available for diverted State prisoners. In addition, under the bills, greater numbers of short-term prisoners would be incarcerated closer to their homes, since a prisoner would be committed to a facility in the county in which he or she was convicted. The bills also would require that a complex provide program and administrative space for various community-based corrections alternatives, such as electronic tethers, minimum security work camps, and intensive residential probation. Counties could fund such programs by using the added money provided by State diversion reimbursements.

Opposing Argument

Providing specific reimbursement rates in statute could lead to future underfunding of counties as operating costs inflated over the years. The reimbursement rates for diverted

State prisoners should be designated as either a specific dollar amount, as in Senate Bill 915 (S-2), or actual costs plus 15% (as proposed in comparable House bills), whichever was greater. In addition, the bills should guarantee that State funds would be appropriated for diversion reimbursements in order to protect counties' long-term commitments to accept diverted State prisoners.

Response: It is necessary to designate specific reimbursement rates in order to ensure statewide uniformity of the rates and to avoid the potential for abuse in claiming "actual costs". In addition, the bills are not appropriation bills, so they cannot guarantee funding; nor can one Legislature mandate spending by future Legislatures, so such a guarantee would be meaningless. Counties' long-term commitments to participating in the diversion program would be sufficiently protected through the contractual procedures and the requirement that the State pay a penalty of 16% for failure or tardiness in making payments to counties.

Opposing Argument

Senate Bill 916 (S-2) would be too demanding of participating counties. A county's responsibilities should be considered fulfilled simply by the county's housing diverted State prisoners; the county should not have to provide space for post-boot camp intensive probation or community-based programs. In addition, Senate Bill 915 (S-2) would infringe on a county's right to determine its own budget by prohibiting it from supplanting current funding with added State funding.

Response: The bills propose a program-driven, innovative system for integrating State and county incarceration as well as community-based corrections programs. The requirement that participating counties operate programs in addition to providing jail space is central to the proposal. In addition, it is the restriction against supplanting current funds that would ensure that counties provided the necessary financial resources for such programs.

Opposing Argument

Public Act 166 of 1965 requires that workers on "State projects" be paid the "prevailing wage" (i.e., generally the equivalent of union wages) in the particular locality where the work is performed. (Under Public Act 166 a "State project" is any construction, repair, alteration,

installation, decorating, painting, completion, conditioning, reconditioning, demolition, or improvement of public buildings, schools, works, highways, bridges, or roads authorized by a State official or institution authorized to contract for such work on the State's behalf.) Senate Bill 916 (S-2), by specifying that certain projects would not be subject to the prevailing wage, is in conflict with that Act. Under the bill, the State would pay for the construction, renovation, or purchase of a community correction complex, regardless of whether a county obtained funding through long-term borrowing; therefore, the State should have to pay workers the prevailing wage in all cases.

If the prevailing wage rate were not provided on the bill's projects, labor could be performed by less-skilled workers and construction could be of lower quality. In addition, the community in which work was performed would be denied the economic benefits of its work force receiving higher wages. Rather than complicate an otherwise positive and innovative proposal with an attempt to avoid the prevailing wage requirement, the bill should remain silent on the issue.

Opposing Argument

The reimbursement rates should not be different for varying lengths of sentences. The daily cost of housing a prisoner with a six-month sentence is the same as the cost of housing a prisoner with a 24-month sentence. The rates should be the same across the board.

Response: Higher reimbursement rates would serve as an incentive to counties to accept the diversion of longer-term prisoners.

Opposing Argument

Diverted State prisoners returned to the DOC by a county sheriff for disciplinary reasons should not count against the 5% or 15% limit on the number of offenders who could be sent to the DOC from that county.

Opposing Argument

Senate Bill 915 (S-2) would require the State to pay for all "nonroutine" medical costs of a diverted State prisoner, while the county would be responsible for all "routine" medical matters. The bill should define and distinguish these respective terms rather than leaving it up to the contract between the county and the DOC.

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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.