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BILL ANALYSIS

Senate Fiscal Agency

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House Bill 4868 (as reported with amendment)  
Sponsor: Representative Margaret O'Connor  
House Committee: Corrections  
Senate Committee: Criminal Justice and Urban Affairs

Date Completed: 2-23-90

**RATIONALE**

Those who wish to visit relatives or friends in prison must 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 it is made more embarrassing and demeaning when they are searched by members of the opposite sex. Some have claimed 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 say they have refrained from complaining to prison authorities. Although Department of Corrections regulations recommend that searches be conducted only by members of the same sex, the Department apparently has not followed the recommendation in all cases. It has been suggested that a requirement for same sex searches be placed in statute.

**CONTENT**

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 visitor.

"Pat down search" would mean a search of a person in which the person conducting the search touched the body or clothing, or both, of the person being searched to detect the presence of concealed objects.

Proposed MCL 791.269a

**SENATE COMMITTEE ACTION**

As passed by the House, the bill provided that an employee or officer of the Department who violated the prohibitions of the bill would be guilty of a misdemeanor punishable by a maximum fine of \$50. The Senate Criminal Justice and Urban Affairs Committee adopted an amendment to remove this provision, since the Department already has administrative remedies available.

**FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

**ARGUMENTS****Supporting Argument**

If there are 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 of the same sex as the person being searched. It should be a basic right of all who visit in prisons not to be searched by members of the opposite sex; no person should be at the mercy of prison personnel under the circumstances now permitted.

**Opposing Argument**

Depending upon the number and proportion of male and female corrections officers at each corrections' facility, the bill simply could 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

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prisons are female, have 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 allowed 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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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.