



**House
Legislative
Analysis
Section**

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**PRISON OVERCROWDING ACT
RECEIVED**

House Bill 4006 as enrolled
Second Analysis (7-2-87)

JUL 20 1987

Sponsor: Rep. Joseph Palamara
House Committee: Corrections
Senate Committee: Criminal Justice, Urban Affairs,
and Economic Development

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THE APPARENT PROBLEM:

The Prison Overcrowding Emergency Powers Act (EPA) was enacted in 1980 amid a prison overcrowding crisis that demanded attention. Under the act, whenever the prison system exceeds its capacity for 30 consecutive days, the state corrections commission is to request the governor to declare a prison overcrowding emergency. Unless the governor promptly finds the commission to have acted in error, he or she is to declare an emergency and the corrections department is to reduce by 90 days the minimum sentences of all prisoners with minimum sentence terms. (In 1983, separate provisions were established for the male and female prison systems.) In 1980, it was thought that the act would truly be an emergency act that would be triggered every two or three years. Instead, its overcrowding provisions have been triggered nine times since it took effect in January 1981, and late in 1984 the governor again was requested to declare the emergency, but declined to do so. Despite the fact that each prisoner's pending release is subject to review by the parole board, reportedly some of those released early have been subsequently charged with violent crimes. Fresh controversy and criticism surrounded the act when it was revealed that one of the persons charged with the 1984 killing of an East Lansing police officer and a Meridian Township woman had been released from prison as a result of successive sentence reductions under the act. For various reasons, the act has fallen into disuse and disfavor, and many have called for its repeal.

However, the act contains the state's requirement that all new prison facilities, except for certain temporary facilities, have only single-occupancy rooms. Many regard this provision to be sound; single occupancy is considered to be good public policy for both humane and practical (e.g. prisoner control) reasons. The exception, created in 1984, enabled the department to build some much-needed temporary housing (such as pole barns) and use it until construction of new prisons was completed. However, the exception exists only for facilities acquired between January 1, 1985 and December 31, 1986. Difficulty in acquiring land for temporary facilities at Muskegon and Carson City postponed completion of those facilities until sometime this fall. Thus, for those facilities to be exempt from the single-occupancy requirement (assuming the requirement is retained), a change in the facility acquisition deadline is necessary. Further, the department expects to need the facilities past the act's 1988 deadline for the switch to single occupancy. It has been proposed that the act's single occupancy requirement be retained, but that its deadlines be extended.

THE CONTENT OF THE BILL:

The bill would repeal Sections 2, 4, and 6 of the Prison Overcrowding Emergency Powers Act and amend Section 8, which requires prisons acquired after January 26, 1981

(the act's effective date) to have only single-occupancy cells, but allows multiple-occupancy cells on a limited basis. Facilities obtained between January 1, 1981 and December 31, 1986 may have multiple-occupancy cells until January 1, 1988. The bill proposes deadlines of December 31, 1988 (rather than 1986) for facility acquisition and January 1, 1991 (rather than 1988) for the switch to single occupancy.

The bill is tie-barred to Senate Bill 14, which would repeal the remainder of the act.

MCL 800.71 through 800.79

BACKGROUND INFORMATION:

As of June 24, 1987, the men's prison population was 19,273 (2,798 over capacity), and the women's population was 926 (134 over capacity).

FISCAL IMPLICATIONS:

The House Fiscal Agency says that based on current construction plans, the bill would have no fiscal implications at this time. (7-8-87)

ARGUMENTS:

For:

Since its enactment, the Prison Overcrowding Emergency Powers Act has been used nine times, substantially more than one would expect for an "emergency" measure. It has reduced some minimum sentences by 90 days several times, potentially cutting one to two years from those sentences and making those prisoners eligible for substantially earlier release. The assertion that this mechanism has pushed criminals into halfway houses and back onto the streets too soon is strengthened every time someone released under the act is implicated in a crime.

Response: Although there is a tendency to view the act as a revolving door through which criminals are returned to society before their prison terms have barely begun, early release is in fact neither automatic nor casual. Even if an inmate is eligible for early release, he or she must still pass a parole board review before a release decision is made. Further, the department has a risk classification system that is supposed to screen prisoners eligible for release and detect those who present a relatively high risk. Reportedly, efforts are under way to improve this screening. Effective screening could defuse criticisms of the act by ensuring that high-risk prisoners do not receive an early release.

For:

The sentence reduction provisions of the EPA are obsolete and unnecessary. The governor has not enforced these provisions since 1984. In addition, the Department of

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Corrections has embarked on an ambitious construction program and has been supported in this endeavor by the legislature and the governor through the appropriations process. Michigan is turning around its prison overcrowding problem without the aid of the act.

Against:

There is no need to repeal an act that is not being used now, but could prove useful in the future. The act was triggered more frequently than anticipated, but the emergencies were not fabricated. Overcrowded conditions increase the likelihood of prison violence, lawsuits, and federal intervention. The state operates its prison system under two court orders: a 1980 circuit court order made in response to a lawsuit brought by the Human Rights Party, and a 1984 federal consent decree issued following action from the U.S. Justice Department. Repeal of the act's release provisions would risk renewed court action and unnecessarily deny the state a timely and potentially useful tool for future emergency situations.

Worse, repeal could leave the state without a mechanism to offer the federal court should the federal court decide to reduce overcrowding by ordering the release of prisoners. The possibility of further federal court intervention is a very real one, as the court in late May temporarily barred the Jackson prison from taking new inmates and threatened the state with a \$10,000 per day fine if it did not eliminate overcrowding at three institutions (Jackson, Marquette, and Ionia Reformatory) by November 1. Federal courts in other states have ordered mass releases to reduce overcrowding. The prison overcrowding act at least offers a systematic method of reducing prison populations through sentence reductions and parole board screening, and is preferable to the potential extremes of judicial action.

For:

The bill is right to preserve the single-occupancy requirement. Not only do single-occupancy cells provide a modicum of privacy and keep inmate tensions to a minimum, but they give guards better control over dangerous situations. With multiple occupancy, when a belligerent prisoner must be removed from a cell, a guard is exposed to attack from cellmates. To minimize this danger, guards would have to work in groups, a strategy complicated by the chronic shortage of guards in the prison system. Although the corrections department does not plan to use multiple occupancy in permanent facilities even if given that authority, there is value in keeping the single-occupancy requirement in statute as a strong expression of state policy.

Against:

The single-occupancy requirement should be repealed along with the rest of the act. Routine use of multiple-occupancy cells reduces construction costs and increases prison capacity. Other states evidently recognize this: Michigan apparently is the only state that has a statutory single-occupancy requirement, and Arizona recently considered legislation to require that all new construction include double-occupancy design. Further, repeal would not mandate multiple occupancy, but rather would allow the state that option. Finally, while some may believe multiple occupancy heightens inmate tensions, the incidence and degree of prison violence is more likely to be affected by staffing levels, staff training, and security classification policies.

For:

If the single-occupancy requirement is to be retained, then the deadlines contained in the exception made for certain temporary facilities need to be adjusted. Otherwise, temporary facilities at Muskegon and Carson City where construction was delayed would fail to qualify for the exception, and the switch to single occupancy will occur before the department has enough beds to comply. The bill would extend the deadlines appropriately.

Response: Some may argue that the reasons that make single occupancy desirable also make an immediate return to the single-occupancy requirement desirable.

Further, the occupancy provisions could use some clarification. While it may be appropriate to allow newly-constructed pole barns to have multiple occupancy temporarily, the same does not hold true for old corrections or mental health facilities remodeled or acquired within the exception's timeframe.