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SENATE ANALYSIS SECTION

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Senate Bill 14 (as passed by the Senate)

Sponsor: Senator Harmon Cropsey

Committee: Criminal Justice, Urban Affairs, and Economic Development

Date Completed: 2-18-87

RATIONALE

Some recently have questioned the efficacy of the Prison Overcrowding Emergency Powers Act (EPA) as a device for alleviating crowded and dangerous prison conditions. Since the Act became effective in January 1981, its overcrowding provisions have been triggered nine times, and late in 1984 the Governor once again was requested to declare a prison overcrowding emergency (although to date he has not done so). An undesirable side effect of this frequent triggering, some contend, has been that a number of prisoners' sentences have been reduced considerably, at times resulting in the early release of inmates whom some consider to be too dangerous to be released. Despite the fact that each prisoner's pending release is subject to review by the parole board, law enforcement officials have reported that some of those released early have been subsequently charged with involvement in violent crimes, including murder; much attention was drawn to the Act, for instance, when it was reported that one of the persons charged with the 1984 killing of a police officer and an East Lansing woman had been released from prison as a result of successive sentence reductions provided for under the Act. Moreover, some contend that the Act simply is not accomplishing its intended aim; after it was triggered in April and May of 1984, the prison population actually increased. Further, the construction of several new prison facilities has eased the overcrowding situation somewhat. For these reasons, some have called for the repeal of the Act.

CONTENT

The bill would repeal the Prison Overcrowding Emergency Powers Act (EPA), on January 1, 1988.

The Act provides for the reduction of minimum sentences of prisoners when certain inmate population conditions prevail, and requires the state corrections commission to request the Governor to declare a prison overcrowding emergency whenever the state prisons' population exceeds 100% of the prison system's total capacity for 30 days. If an emergency is declared, the sentences of all prisoners who have minimum sentences are reduced by 90 days, making these prisoners eligible for earlier parole and, in some cases, release. If this action does not reduce capacity below 95% in 90 days, a second reduction is to be made. The Act also requires that all new prison facilities have only single occupancy cells (although multiple occupancy cells may be used until 1991), and comply with all applicable state and federal laws.

MCL 800.71-800.79

BACKGROUND

The EPA (Public Act 519 of 1980) was enacted upon the recommendation of the Joint Legislative/Executive Task Force on Prison Overcrowding to address Michigan's continuing prison overcrowding crises. The task force was concerned that some type of emergency mechanism to alleviate crowded prison conditions would be necessary in order to avoid federal court intervention in the daily operation of the state's prison system. In fact, at the time the Act was passed, over 20 states were already either under federal court order or were being sued in federal court as a result of overcrowded and allegedly unconstitutional confinement conditions. In 1981, the Michigan Supreme Court ruled that the Act was within the Legislature's purview and was not an unconstitutional infringement of the Governor's power to commute sentences (*Oakland County v Department of Corrections*, 441 Mich 183). 4-11 Mich 183

The single occupancy cell provisions of the Act were a response to an order of the Ingham County Circuit Court in the case of *Human Rights Party v Michigan Corrections Commission, et al.* that required private or single cells to contain not less than 46 square feet of floor space and shared rooms or dormitories to contain not less than 60 square feet of floor space per prisoner.

Since its passage, the EPA has been amended several times. In 1983, among other changes, an amendment was adopted to require that "capacity" be determined separately for the male and female prison systems. The Act also was amended by Public Act 315 of 1984 to include temporary bedspace in the definition of "capacity", under certain conditions. The 1984 amendment allowed trailers, modular units, or other bedspace not designed for prison housing to be included in the Department of Corrections' determination of total prison capacity through January 1, 1986. It also permitted the Department to purchase, lease, construct, or convert facilities that have multiple occupancy rooms between January 1, 1985, and December 31, 1985, and to use such housing for prisoners until January 1, 1987. The 1984 Act allowed approximately 200 temporary beds to continue to be counted toward "capacity" through 1985. The most recent amendment to the Act (Public Act 199 of 1986) extended the time period during which the Department could purchase, lease, construct, or convert multiple occupancy cell facilities to December 31, 1986, and allowed use of such facilities until January 1, 1988. Senate Bill 174 of the 1985-86 legislative session, which would have repealed the EPA, passed the Senate but was not enacted into law. Senate Bill 188 of the same session, which also would have repealed the EPA, was reported out of the Senate Committee on Corrections, but was referred back to that committee by the Senate.

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FISCAL IMPACT

The bill would result in a GF/C P expenditure increase of \$49.9 million in FY 1986-87, \$ 07.7 in FY 1987-88, \$116 million in FY 1988-89 and \$51.2 million in FY 1989-90.

Despite the fact that the State's prison capacity increased by 2,610 beds between October 1, 1985, and January 1, 1987, Michigan's prison system was 1,958 prisoners over capacity on January 14, 1987. The EPA was designed to serve as a policy tool which the Governor could utilize to relieve prison overcrowding on a temporary basis after an overcrowding emergency was declared. Since the last time the EPA was used in mid-1984, the state's prison population has exceeded capacity every month. While the EPA was

never intended to be a long-run solution to control population, it proved to be a very effective short-run release mechanism.

To eliminate the overcrowding situation, which existed as of January 14, 1987, without benefit of the EPA would require the State to build 3.75 regional prisons (528 beds each). The construction cost for each regional prison would be about \$43 million with annual operating expenses of approximately \$9.5 million each in FY 1986-87. Further, it is assumed that the annual operating costs for housing the prisoners until the permanent facilities come on-line would be \$8.4 million per prison. This is equivalent to the cost associated with operating a temporary facility.

Costs Per Fiscal Year (dollars in millions)

| | FY 1986-87 | FY 1987-88 | FY 1988-89 | FY 1989-90 | Total |
|--------------|----------------|----------------|----------------|----------------|----------------|
| Construction | \$ 18.8 | \$ 75.0 | \$ 67.5 | \$ 0 | \$161.3 |
| Operating: | | | | | |
| Temporary | 31.1 | 32.7 | 0 | 0 | 63.8 |
| Permanent | 0 | 0 | 48.8 | 51.2 | 100.0 |
| TOTAL | \$ 49.9 | \$107.7 | \$116.3 | \$ 51.2 | \$325.1 |

This is a conservative fiscal analysis because the costs of constructing the temporary prison facilities required to house the prisoners during the construction period were

not included. A cost of \$8.5 million for each 640-bed temporary facility would increase FY 1986-87 costs by an additional \$25.5 million.

ARGUMENTS

Supporting Argument

Since its enactment, the Prison Overcrowding Emergency Powers Act has been used nine times, far more than one would expect for an "emergency" measure. In many cases, the excessive exercising of powers granted by the Act has reduced some sentences by six, seven, or eight times 90 days, potentially cutting one to two years from some prisoners' sentences and making those prisoners eligible for substantially earlier release. The claim that this mechanism has pushed criminals into halfway houses and back onto the streets too soon is reinforced every time someone released as a result of a prison overcrowding emergency is implicated in a crime. Imminent repeal of the Act would compel state officials, the Legislature, and all concerned with the fate of prisoners in Michigan to look for better, longer-term solutions to the prison overcrowding crisis than the delusive one the Act has provided during the last six years.

Response: Although there is a tendency to view the Act as a revolving door, through which criminals are thrown back into 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, Michigan does have a "risk classification" system in place to screen those eligible for release and detect those who present a relatively high risk of returning to criminal behavior. Reportedly, efforts are under way to improve this screening. Given the strain that is put on the prison system by a consistently high level of commitments, however, it is not surprising that some among those who have been released to relieve crowding escaped careful screening.

Supporting Argument

The sentence reduction provisions of the EPA are, in effect, obsolete. The Governor has not enforced these provisions since 1984, and he reportedly supports the repeal of them at this time. In addition, the Department of 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.

Supporting Argument

The multiple occupancy section should be repealed. Two of the major concerns in Michigan over the last ten or so years regarding corrections have been costs and overcrowding. It has been estimated that construction of double occupancy housing would lead to a 5% to 7% savings over single occupancy housing. The Arizona legislature reportedly has considered a statute requiring that all new construction be of double occupancy design; the idea behind such a measure was that it would be cheaper for the state to build only multiple occupancy prison housing. In addition, if we are to be concerned with overcrowding in our prison system, it would make sense to use double or multiple occupancy cells in order to increase capacity.

Response: The use of double and multiple occupancy cell facilities is not a logical response to the problem of prison overcrowding. Rather than working to alleviate the overcrowding problem, it would contribute to it. Reshuffling prisoners from single occupancy cells to double or multiple occupancy cells would merely disguise the overcrowding problem; such action taken during times of overcrowding crises might lead to external pressures for permanent multiple occupancy — a situation the Department of Corrections wishes to avoid. As for cost savings, the projected figures apply to construction costs and do not account for any increased operational costs that may be required (e.g., employing more guards).

Opposing Argument

There is no doubt that the Act has been overused, but this does not necessarily mean that the safety valve it provides is useless. The problem is that the Act, instead of being one resort or the last resort to check prison overcrowding, has essentially been the only resort. The passage of legislation providing for mandatory sentences and an unabating tendency of judges to commit approximately 50

criminals a week to the state prison system have provoked corrections officials to invoke the Act perhaps more frequently than those who designed it had anticipated. The emergencies have not been fabricated: eruptions of violence are invited whenever people who have displayed dangerous behavior are crammed together or housed in gymnasiums or nooks and crannies of antiquated prisons that were never intended to be prisoners' quarters. The use or misuse of the Act is symptomatic of a more fundamental problem: Michigan simply does not yet have enough prison space. It is only in the last few years that the Legislature has appropriated substantial sums of money for prison construction financing. Once sufficient new prison space becomes available, which may be as soon as two or three years from now, the EPA could demonstrate its value as strictly an emergency measure; instead of being repealed, it should be left in place.

Opposing Argument

Some may think that the bill would be an effective way to keep criminals in prison and off the streets. It could do that, but only in the short run and potentially at great cost. Prison overcrowding will remain a problem until comprehensive sentencing review is completed and provisions are made for better use of prison space, whether that space currently exists or whether it is about to be built. As long as the state moves, however, to undo the only affirmative statutory action it has taken to address prison overcrowding emergencies, it fuels the fire of those already prepared to bring suit against the State because of current, crowded prison conditions. The State has been sued in the past for allowing such conditions to develop, and prison operations in many other states are subject to court order because of overcrowding. The bill may presuppose other measures, such as sentencing revision or prison construction, but it is not conditioned on them, and without such measures the bill would do nothing but exacerbate already threatening prison conditions.

Opposing Argument

While it may be necessary to extend temporarily the multiple occupancy authorization, the requirement of single occupancy cell design should be retained in statute. Single occupancy cells provide for more secure conditions in the long run. They are less difficult to control than are multiple occupancy facilities and they cause less tension among inmates than do multiple occupancy facilities. For these reasons, the Corrections Department does not plan to use multiple occupancy in permanent facilities even if given that authority. Simply extending the multiple occupancy authorization would give the Department the legal authority it needs to continue with its construction plans.

Response: Repeal of the single occupancy provision not only would address the Department's current construction dilemma but also would prevent the situation from arising again. Further, violence in the prison system is less likely a result of multiple occupancy than of such factors as inadequate staffing and staff training, staff ratio to inmates, and security classification waiver policies. Moreover, repeal of the single occupancy provision would not mandate that state prisons use multiple occupancy cells, but would afford the Department the latitude to do so. Situations, now unforeseen, might arise when the Department would find such authority desirable or even necessary.

Legislative Analyst: P. Altholter
Fiscal Analyst: B. Burghardt

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.