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BILL ANALYSIS

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House Bill 4006 (Substitute S-1 as reported)**Sponsor: Representative Joseph Palamara****House Committee: Corrections****Senate Committee: Criminal Justice, Urban Affairs, and Economic Development****Date Completed: 6-22-87****RATIONALE**

In recent years, many people 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 subsequently have been 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 slaying of a police officer and an East Lansing woman previously 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 at least the sentence reduction provisions of the Act.

The EPA also requires new housing or facilities that are to be used as prisons to have only single occupancy rooms or cells. It has been argued, however, that this provision would render some of Michigan's pending prison construction projects illegal and that it hinders the efficient operation of the State's correctional facilities. (The Department of Corrections has no plans to utilize multiple occupancy in permanent facilities, but its temporary structures are designed with multiple occupancy rooms.) Some contend that, due to the design of the planned temporary prison facilities, the single occupancy provision of the Act should be abolished. Others, however, feel that repealing the single occupancy provision would be an unnecessarily extreme response to the problem of authorizing cell design for temporary facilities. For this reason, they contend, the single occupancy provision merely should be amended to extend the time frame during which multiple occupancy is permitted.

CONTENT

The bill would repeal Sections 2, 4, and 6 of the Prison Overcrowding Emergency Powers Act, which define terms used in the Act, require the Governor to declare a "prison overcrowding state of emergency" under certain

conditions, and provide for rescinding a state of emergency; and would amend the section that requires prison facilities to have only single occupancy rooms to comply with all applicable Federal and State laws, and allows prisons acquired or constructed from January 1, 1985, to December 31, 1986, to have multiple occupancy cells until January 1, 1988. The bill would amend that provision to allow facilities acquired or constructed from January 1, 1985, to December 31, 1988, to have multiple occupancy until January 1, 1991.

The bill is tie-barred to Senate Bill 14.

MCL 800.78

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 already either were 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).

The single occupancy cell provision of the Act was a response to provisions of a court 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 Act 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.

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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. Senate Bill 14 of the current legislative session, as introduced and passed by the Senate, would repeal the EPA. Senate Bill 191 of the current session also would repeal the entire Act and was passed by the Senate as part of a package of bills that would eliminate the Corrections Commission.

SENATE COMMITTEE ACTION

As passed by the House of Representatives, House Bill 4006 would repeal all of the Prison Overcrowding Emergency Powers Act except that section dealing with single occupancy cell requirements; and would amend that section in the same manner as would the Senate substitute to the bill. The Senate Committee on Criminal Justice, Urban Affairs, and Economic Development adopted a substitute to the bill that would call for the repeal of only sections 2, 4, and 6. (Reportedly, Senate Bill 14 will be amended by the House to repeal the odd-numbered sections of the Act.)

FISCAL IMPACT

The bill would result in a GF/GP expenditure increase of \$49.9 million in FY 1986-87, \$107.7 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 designed 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 came 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 Act has been used nine times; far more than one would expect of 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 early release provisions 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 hardly begun, early release is in fact neither automatic nor casual. Even if an inmate is eligible for early release, he or she

still must 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, it is not surprising that some among those who have been released to relieve overcrowding escaped careful screening.

Supporting Argument

While it is necessary to extend the multiple occupancy authorization temporarily, it also is important to retain the requirement of single occupancy cells design for permanent facilities. Single occupancy cells provide for more secure conditions in the long run. They are less difficult to control than are multiple occupancy facilities. For these reasons, the Corrections Department does not plan to use multiple occupancy in permanent facilities even if given that authority. The bill also would give the Department the legal authority it needs to continue with its construction plans. Without it, the temporary multiple occupancy facilities scheduled to be put into use this year

(Muskegon and Carson City) and next year (Kinross and Adrian) would violate the EPA. The bill is less extreme than other proposed measures that would repeal the entire Act, including the single occupancy provision and the exception to it.

Response: The entire Act should be repealed. Repeal of the single occupancy provision also would address the Department's current construction dilemma and 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 utilize multiple occupancy, 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.

Supporting Argument

The sentence reduction provisions of the EPA are, in effect, obsolete. The Governor has not enforced these provisions of the Act 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.

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 been essentially 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 prison overcrowding Act could demonstrate its value as strictly an emergency measure; instead of being repealed, the Act 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

Rather than amended, the section requiring single occupancy should be repealed. Two of the major concerns in Michigan over the last 10 or so years regarding corrections have been costs and overcrowding. The Arizona legislature, for example, reportedly had 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 feasible 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 merely would 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. Further, projected cost savings apply to construction costs and do not account for any increased operating costs that may be required (e.g., employing more corrections officers).

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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.