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BILL ANALYSIS



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House Bill 5800 (Substitute S-1 as reported)
Sponsor: Representative Geoff Hansen
House Committee: Judiciary
Senate Committee: Judiciary

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RATIONALE

Public Act 164 of 1996 amended the Department of Corrections (DOC) law (now named the Corrections Code) to authorize the DOC to establish a youth correctional facility to house prisoners committed to the Department's jurisdiction who are 19 years of age or less and who were convicted as adults for offenses committed as juveniles. The Act permitted the DOC to establish and operate the youth correctional facility or contract with a private vendor for the construction and/or operation of the facility. The State invited private companies to submit competitive proposals for the construction and operation of a prison designed specifically for youth offenders, and entered into an agreement with the Wackenhut Corrections Corporation (now known as the GEO Group) to lease a facility that the vendor constructed and operated. Public Acts 508 through 514 of 1998 amended various statutes to provide for the operation of a youth correctional facility by a private vendor, as authorized under the 1996 legislation.

The Michigan Youth Correctional Facility (MYCF) operated as a privately run prison in Lake County's Webber Township until the fall of 2005. As part of the State's budget process for fiscal year 2005-06, the State terminated its contract with the GEO Group and transferred prisoners housed at the MYCF to State-operated correctional facilities. Since the Corrections Code allows the operation of the privately owned MYCF only for youth offenders under the DOC's jurisdiction, the GEO Group cannot use the facility for any other purpose. Some people believe that the Corrections Code should permit the private vendor that operated the

former MYCF to contract with Federal, state, or local agencies to house their prisoners at that facility.

CONTENT

The bill would amend the Corrections Code to do all of the following:

- **Allow the private vendor operating the MYCF to use the facility to house inmates or detainees from other local, state, or Federal agencies, if it were not used to house inmates under the jurisdiction of the DOC.**
- **Require that a contract for housing detainees or inmates under the bill mandate that the facility be accredited, that employees meet certain training standards, and that serious incidents be reported to the county sheriff and the State Police.**
- **Authorize staff of the facility to perform duties and responsibilities to the same extent as DOC personnel in a State correctional facility.**
- **Prohibit a contract with a local, state, or Federal agency from delegating to the vendor certain authority regarding parole eligibility or earned credits.**
- **Require the facility to allow agencies sending inmates to monitor conditions of confinement.**
- **Prohibit inmate work release; prescribe inmates' security classification; prohibit the release in Michigan of inmates sent from out of State; and require the secure transfer of inmates.**

- **Specify that the DOC would not have oversight responsibility and the State would not be civilly liable for the facility's operation.**

Use of the MYCF

Under the bill, if the MYCF established in Webber Township, Lake County, were not used by the DOC for housing inmates or detainees under its jurisdiction, the private vendor that operated the facility could use it for housing, custody, and care of detainees or inmates from other local, state, or Federal agencies. The vendor could do so by contracting directly with those agencies or by having one or more of them enter into an interlocal agreement with Webber Township, Lake County, or the county sheriff of Lake County, who in turn could contract with the private vendor for services to be provided under the terms of the interlocal agreement. If all contractual factors regarding potential inmates or detainees were equal, the private vendor would have to give preference to admitting inmates or detainees sent from agencies within Michigan.

Contract Requirements

Any contract under the bill for the housing, custody, and care of detainees or inmates from other local, state, or Federal agencies would have to require the private vendor operating the facility (the former MYCF) to obtain accreditation of the facility by the American Correctional Association (ACA) within 24 months after the vendor began operations at the facility and to maintain that accreditation throughout the term of any contract for the use of the facility. The contract also would have to require the vendor to operate the facility in compliance with the applicable ACA standards.

In addition, the contract would have to require the personnel employed by the private vendor in the operation of the facility to meet the ACA employment and training requirements, and to meet any higher training and employment standards mandated under a contract between the vendor and a local, state, or Federal agency that sent inmates or detainees to the facility.

The contract also would have to require that any "serious incident" that occurred at the facility be reported immediately to the Lake

County sheriff and to the State Police. ("Serious incident" would mean a disturbance at the facility involving five or more inmates or detainees, a death of an inmate or detainee, a felony or attempted felony committed within the facility, or an escape or attempted escape from the facility.)

A contract with a local, state, or Federal agency that sent inmates or detainees to the facility could not require, authorize, or imply a delegation of the authority or responsibility to the private vendor to do either of the following:

- Develop or implement procedures for calculating inmate release and parole eligibility dates or recommending the granting or denying of parole, although the vendor could submit written reports prepared in the ordinary course of business.
- Develop or implement procedures for calculating and awarding earned credits, including good time credits, disciplinary credits, or similar credits affecting the length of an inmate's incarceration; approving the type of work inmates could perform and the wage or earned credits, if any, that could be awarded to inmates engaging in that work; and granting, denying, or revoking earned credits.

Monitoring

The facility would have to allow the presence of on-site monitors from any local, state, or Federal agency that sent inmates or detainees to the facility, for the purpose of monitoring their conditions of confinement. Whenever the vendor submitted a written report to a local, state, or Federal agency that sent inmates or detainees to the facility, it would have to send copies of the report to the Webber Township supervisor, the Lake County board of commissioners, the Lake County sheriff, and the DOC.

Other Provisions

Vendor Personnel. Personnel employed at the facility by the private vendor who met the employment and training requirements in the applicable ACA standards would have full authority to perform their duties and responsibilities under law, including exercising the use of force in the same manner and to the same extent as would be

authorized if those personnel were employed in a DOC correctional facility.

Outside Work Prohibition. An inmate or detainee housed at the facility could not participate in work release, a work camp, or another similar program or activity occurring outside the facility's secure perimeter.

Security Classification. An inmate or detainee could not be housed at the facility unless his or her security classification, as it would be determined by the DOC if he or she were housed in a State correctional facility, were Level IV or below, and had never previously been above Level IV. ("Security classification" would refer to one of six levels of restrictiveness enforced in housing units at each State correctional facility, as determined by the DOC, with Level I being the least restrictive and Level VI being the most restrictive.)

Transfer & Release. Inmates and detainees would have to be transferred to and from the facility in a secure manner. Any inmate or detainee housed at the facility who was sent from another state, a local agency outside of Michigan, or the Federal government would have to be returned to the agency that sent the inmate or detainee upon completion of his or her term of incarceration in the facility and could not be released from custody within Michigan.

Oversight & Liability. The bill specifies that the DOC would not be responsible for oversight of the facility. Also, neither the State nor any department or agency of the State would be civilly liable for damages arising out of the operation of the facility.

Proposed MCL 791.220i

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The operation of the MYCF had provided Lake County, one of the poorest counties in the State, with valuable jobs and tax revenue. The facility reportedly accounted for about 40% of Webber Township's overall tax base and more than 50% of Lake County's commercial/industrial tax base. It also provided about 25% of the revenue for

nearby Baldwin's wastewater treatment plant, whose loss may result in either the village's default on bonds or large rate increases for other users of the plant, primarily residential customers.

Also, since it opened in 1999, the facility had a positive impact on the area economy by paying approximately \$1.6 million for hospital and other medical services, \$5.3 million in property taxes distributed to Lake County schools and various other local taxing entities, and \$43.6 million in wages and benefits to employees of the facility. The GEO Group reportedly was generous to various charities and provided scholarships for local students. According to a May 18, 2006, article in the *Cadillac News*, Lake County "is struggling to adjust to its losses and move forward" ("Baldwin rebuilds"). The article cited a Baldwin official who said that, since the closure of the MYCF, the community has seen businesses close, school enrollments decline, foreclosures increase, and housing and hotel development projects stall. The official suggested that the area's economic plan has moved back 15 to 20 years.

Though currently vacant, the former MYCF still has a vital economic development potential for Lake County and area municipalities. Until its abrupt closure last fall, the facility apparently was the area's largest employer, and it could be again. Since the Corrections Code allows the facility to be used only for a youth correctional facility under contract with the State, however, this relatively new and expensive structure has been unused for almost a year. Authorizing the facility's owner to use it to house prisoners from other jurisdictions could revive the area's economy by supplying jobs to local residents and increasing tax and utility payments back to the levels paid by the vendor when it was under contract with the State.

Supporting Argument

According to testimony before the Senate Judiciary Committee by a GEO Group official, the company operates 49 correctional facilities in the United States, housing about 39,000 prisoners. It has contracts with Federal, state, and local entities for the management and custody of offenders throughout the country. The GEO Group has ample experience and expertise in operating prisons to house offenders for various

governmental agencies. The State should allow the company to use its Michigan facility to contract for such services. Indeed, the company evidently is in discussions with a number of governmental agencies to provide prison services at that facility, but amendments to the Corrections Code must authorize the use of the former MYCF for prisoners other than Michigan's youthful offenders. The GEO Group official estimated that it could solidify an agreement to use the facility in as little as three to five months, if the Code were amended. A delay in enacting the legislation could result in missed opportunities for the company to use the prison and for the Baldwin area to realize the economic development potential of the facility.

Opposing Argument

When the GEO Group operated the MYCF under contract with the State, the agreement apparently was quite detailed in spelling out the liability of each party to the contract. The bill is not as clear as to any liability on the part of the State or local units of government in Michigan that could decide to contract for the detention of prisoners at the facility. Also, the bill does not address whether Federal or out-of-State entities that sent prisoners to the facility under contract with the GEO Group would have any exposure to liability or would need to be indemnified to protect themselves against such exposure.

Response: The Senate substitute clearly states that the State and its departments and agencies would not be civilly liable for damages arising out of the operation of the facility. In addition, the GEO Group official told the Senate committee that the company would accept total responsibility for indemnification and liability exposure.

Opposing Argument

There are a number of concerns regarding the operation of the facility for the purpose the bill would authorize. The bill would give the facility up to 24 months to achieve ACA accreditation, rather than requiring the facility to meet ACA standards from day one, and the bill does not specify what would happen if the facility failed to achieve accreditation. Also, the bill does not adequately address standards for the transport of prisoners to and from the State and within Michigan, but specifies only that they would have to be transferred "in a

secure manner". Further, if the facility contracted with out-of-State entities to house prisoners, it is unclear whether those prisoners would be prosecuted in Michigan courts, or those of the sending state, for infractions committed while incarcerated in the facility. Finally, while the bill would require a "serious incident" to be reported to county and State law enforcement officials, that term is defined with respect to a disturbance involving five or more detainees; an incident involving fewer than five prisoners certainly could be serious in nature, as well.

Response: According to the GEO Group official who testified before the Senate committee, ACA accreditation must be obtained over a period of time, and the facility's previous accreditation was lost when it closed last fall. The ACA will not grant accreditation on an immediate or preliminary basis. In addition, the company operates its transport services according to Federal guidelines for transporting prisoners and it would be required to meet those standards for prisoners transferred to or from the former MYCF. As for handling serious incidents, the official said the company is obligated to operate its facilities in a safe, secure, and orderly manner and has its own internal policies in addition to what may be required in statute or by contract.

Opposing Argument

The operation of prisons simply should not be a private sector function. It is difficult enough for the State to oversee the publicly operated corrections system and to monitor important related issues like the mental health of prisoners. In its early years operating the MYCF, the Wackenhut Corporation apparently had a number of staffing and security violations at the facility. As recently as September 2005, Michigan Protection and Advocacy Service, Inc. filed a Federal lawsuit against the GEO Group, the MYCF warden, and the DOC Director, claiming that young offenders were not spending enough time in school and those with mental and developmental disabilities were not getting adequate help ("Michigan youth prison is sued by group", *The Detroit News*, 9-16-05). At the very least, the State should have a role in monitoring any private prison that would operate within Michigan.

Response: The State entered into the agreement for the privately owned and operated facility in Lake County, but has

chosen to terminate the contract. If the State does not want its prisoners housed there, it should at least allow the facility's owner to contract with other entities so that the facility may be put to use. During the course of the State's contract with the private vendor, the DOC had on-site monitors. It is customary for the contracting public entity to monitor a private prison facility and its operations. That would continue under the bill, as the facility would have to allow on-site monitors from any local, state, or Federal agency that sent inmates or detainees to the facility. While the DOC would not have any direct monitoring responsibility (unless it were the contracting entity), the bill would require that, whenever the vendor submitted a written report to an agency that sent inmates or detainees to the facility, it also send the report to the DOC and the township, county, and county sheriff. Finally, the GEO Group official testified that all of Wackenhut's early violations in operating the facility were addressed through hearings, and the company took corrective actions.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

To the extent that the bill would provide an option for the Department of Corrections or local units of government to house inmates at a cost saving, the State or local units would incur decreased corrections costs. To the extent that the bill would result in additional employment at the facility and in region, and thus cause improvements in the local economy, local units near the facility would benefit from additional tax revenue.

Fiscal Analyst: Lindsay Hollander

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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.