



**House
Legislative
Analysis
Section**

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THIS CORRECTED ANALYSIS REPLACES THE ANALYSIS DATED 3-28-89

PRISONERS' PERSONAL PROPERTY

Senate Bill 15 (Substitute H-1)
First Analysis (4-10-89)

RECEIVED

MAY 23 1989

Sponsor: Sen. Jack Welborn
Senate Committee: Criminal Justice, Urban Affairs, and Economic Development
House Committee: Corrections

THE APPARENT PROBLEM:

With inmate population swelling beyond capacity in the state's correctional facilities, the Department of Corrections (DOC) — in an effort to tighten security — attempted to implement policies that would limit the amount of personal property prisoners may possess in their cells. DOC Policy Directive BCF-53.01 (Prisoner Personal Property Control) was revised to place restrictions on personal property in proportion to a prisoner's security classification, and emergency rules to implement these policy directives were signed by the governor in October, 1988. These attempts were halted, however, when the Ingham County Circuit Court enjoined the personal property provisions, which have been challenged in a pending class action suit brought by inmates (Cain et al. v Michigan Department of Corrections). Reportedly, the DOC has agreed not implement the emergency rules either, until the court case is concluded. Some feel that the property-limiting policies should be implemented and that legislation should be enacted that would specify the restrictions being placed on the amount of personal property (including personal clothing) that prisoners in correctional facilities could have. Such legislation, it is believed, would give the policy directives the force of law necessary to overcome the current legal challenge.

THE CONTENT OF THE BILL:

The bill would amend the prison code to regulate the type of personal clothing, the amount of personal property, and the amount and type of legal materials that prisoners in correctional facilities could have, according to the facility's security designation. (The bill would define "security designation" as one of six levels of restrictiveness enforced at each correctional facility, as determined by the department, with Security Level I being the least restrictive and Security Level VI being the most restrictive, and "personal clothing" as any clothing that is not a uniform or other standardized clothing issued by the department.)

Personal clothing requirements:

- A prisoner in a correctional facility having a security designation of I, II, or III could wear or have personal clothing in his or her living area;
- A prisoner in a correctional facility that had a security designation of IV, V, or VI could not wear, or have in his or her living area, any personal clothing;
- A prisoner in a facility having a level IV designation would be allowed to wear personal clothing for court appearances or during visits, and a prisoner in a facility that had a level V or VI designation would be provided civilian clothing by the institution for jury trials or as ordered by the court for other court appearances.

Personal property restrictions: Under the bill, personal property — including personal clothing — in a prisoner's living area, could not exceed the following limits: in a correctional facility having a security designation of I, II, or III, not more than the amount that could be contained in one duffel bag and one footlocker, as approved by the department; in a correctional facility having a security designation of IV, V, or VI, not more than the amount that could be contained in one duffel bag or one footlocker, as approved by the department. Personal property of a type otherwise prohibited by the department would be prohibited.

A prisoner could possess property in excess of the above amounts if that property consisted of "legal materials" that were not available in the institutional law library to which the prisoner had access. Under the bill, "legal materials" are defined as either: i) pleadings and other documents ordinarily filed with a court, and items that are needed for litigation which the prisoner is currently pursuing on his or her own behalf, or on behalf of another prisoner if that assistance has been approved by the institution head; or ii) pleadings, transcripts, court orders and court opinions arising out of the offense for which the prisoner is currently incarcerated. The bill specifies, however, that "access" should not be interpreted to mean that a prisoner must be allowed physical access to a law library.

The department would be required to phase in these provisions 30 days after the bill became effective, and to implement them fully by January 1, 1990.

MCL 800.42

HOUSE COMMITTEE ACTION:

The House Corrections Committee adopted a substitute bill that differs from the Senate-passed version in that it would require facilities having a security designation of V or VI to provide civilian clothing for prisoners for court appearances. The substitute bill would also allow prisoners to possess property in excess of the amounts designated under certain circumstances.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would result in a cost to the state of \$500,000 for additional uniforms. Prisoners at present receive two sets of uniforms; those affected by the proposed legislation to restrict personal clothing would receive one additional set each. (2-23-89)

ARGUMENTS:

For:

Limiting the amount and type of personal property that prisoners may keep in their cells is a security and management issue: the more items allowed in a cell, the

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greater the potential for hidden contraband and makeshift weapons. The necessity to oversee all the various items in a prisoner's cell, and to search them in the event of a "shakedown," results in more time demands on and greater potential danger to prison staff. Reportedly, it takes from 30 minutes to two hours just to search one cell. The bill would allow corrections officers and other staff to be more effective in enforcing DOC policies, overseeing prisoners, and protecting themselves and other inmates.

For:

The delay in implementing the property restriction policies is holding up the DOC's plan to begin operating its first level VI (often referred to as "supermax") facility at the Ionia Correctional Facility for prisoners who represent the most serious security risk. An integral part of an effective supermax facility is the limitation of privileges such as possessing personal property and wearing personal clothes.

For:

The bill would support DOC policies that provide for stricter security standards for prisoners in higher security facilities. The policies provide incentives that allow prisoners to "earn" by good conduct decreases in their security designation levels. By allowing prisoners to possess more property in lower security designations, and imposing greater property restrictions for prisoners in higher designations, the bill would provide even greater incentives.

Response: The property restrictions proposed in the bill and in the enjoined policy directives are far more stringent than anything currently imposed for all security levels. In effect, rather than providing incentives, the bill would punish all prisoners, regardless of prior behavior or security designations, since possession privileges would be curtailed across the board.

Against:

The bill specifies that a prisoner in a correctional facility with a security designation of I, II, or III may wear and have personal clothing in his or her cell, and that a prisoner in a correctional facility with a security designation of IV, V, or VI may not, although a prisoner in a facility having a level IV designation may wear personal clothing for court appearances or during visits. The bill also requires that institutions provide clothing for prisoners in facilities with a security designation of V or VI for jury trials or other court appearances. In committee testimony and according to DOC Policy Directive BCF-53.01, however, it is made clear that the department will not store prisoners' personal property in excess of the amounts specified in the bill. The bill should be amended to make it clear whether prisoners in level IV facilities will be allowed to have personal clothing and where that clothing will be stored.

Against:

The bill's requirement that institutions with a security designation of V or VI provide civilian clothing for prisoners "for jury trials or . . . for other court appearances" places an unfair burden on taxpayers. Prisoners in county jails aren't provided civilian clothing for court appearances; why should these prisoners — who, more than others, have displayed a history of violence — be awarded this privilege?

Against:

Restricting the personal property privileges of all prisoners could be a violation of their rights to due process of law. This issue has yet to be resolved, as a class action suit challenging the DOC's policy directives is pending before the Ingham County Circuit Court. Those challenged policies should not be enacted while legal challenges to them remain unresolved. Further, simply codifying the policies would not cure any constitutional deficiencies.

Against:

For those in prison, personal property can be the one remaining aspect of their lives that gives them a sense of self. For some, especially those facing long prison terms, being forced to part with some of this property would amount to cruel and unusual punishment. For those prisoners who have no home to return excess property to, the bill makes no provision for storage of property on a permanent basis. Further, according to the department's policy directives, "prisoners who are required to reduce their personal property because of an increased custody transfer and who are unwilling or unable to dispose of it shall have their property deemed abandoned." Since a grievance procedure can take from 60 to 90 days, a prisoner who appealed an increased custody transfer would probably lose the property in question even if the proposed transfer turned out to be a violation of department policy, since neither the bill nor the policy directive makes any provision for storage of disputed property.

Against:

The claim that allowing prisoners to keep personal property in their cells leads to greater violence and other disruptions is unfounded. Although the proposed property restrictions have not been implemented, there was a dramatic decrease in prisoner-on-prisoner assaults last year, from 693 in 1987, to 491 in 1988, at the same time that prison population increased by 16 percent. Allegations that the two murders of corrections officers last year were attributable to prisoners' personal property privileges have also been proven to be unfounded. In fact, the incidents occurred because the staff on duty at the time of the incidents did not comply with department policies and professional standards.

Response: According to DOC, last year's reduction in assaults is directly attributable to increased staffing and security measures. However, with prison populations continuing to swell beyond original projections and construction of new prisons already falling behind schedule, security problems will continue to surface periodically. Rather than wait for these problems to arise, the legislature should anticipate them and act to address the problems before they occur. It makes sense to eliminate non-essential prisoners' property if that property could be used to hide weapons or drugs, and is, in addition, both a health and a fire hazard.

POSITIONS:

Representatives from the Department of Corrections testified before the House Corrections Committee in support of the bill. (2-15-89)

A representative from the Michigan Corrections Organization/SEIU Local 526M testified before the House Corrections Committee in support of the bill. (2-15-89)

The Michigan Sheriffs Association supports the concept of the bill, but opposes the House Corrections Committee amendment that would require DOC to provide civilian clothing for prisoners in facilities with security levels V and VI for court appearances. (2-23-89)

The Office of the Legislative Corrections Ombudsman testified before the House Corrections Committee in opposition to the bill. (2-28-89)

Representatives of the following organizations testified before the House Corrections Committee in opposition to the bill: (2-22-89)

Michigan Council on Crime and Delinquency American Friends Service Committee's Criminal Justice Program