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BILL ANALYSIS

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Senate Bill 15 (as reported without amendment)

Sponsor: Senator Jack Welborn

Committee: Criminal Justice, Urban Affairs, and Economic Development

Date Completed: 2-1-89

**RATIONALE**

According to the Department of Corrections (DOC), the privilege of prisoners in the State's correctional facilities to maintain personal property in their cells poses both management and security problems. The DOC has attempted to implement policies, first through internal policy directives passed by the Corrections Commission and later through emergency rules signed by the Governor, that would limit the amount of personal property that prisoners could possess. These attempts were halted, however, when the Ingham County Circuit Court enjoined the personal property provisions of the policy directives, which were challenged in a pending class-action suit brought by inmates (Cain et al. v Michigan Department of Corrections). (Reportedly, the DOC has agreed not to implement the emergency rules, either, until the court case is concluded.) Some people believe that the property-limiting policies should be implemented and that specifying those policies in statute would give them the force of law necessary to overcome the current legal challenge against them.

**CONTENT**

The bill would amend Public Act 118 of 1893, which provides for the operation of State prisons, to specify restrictions that would be placed on prisoners' possession of personal property.

A prisoner in a correctional facility with a "security designation" of IV, V, or VI could not wear or have personal clothing in his or her living area, although a prisoner in a facility having a level IV designation could wear personal clothing for court appearances or during visits. (A prisoner in a correctional facility that had a level I, II, or III designation, however, could wear or have personal clothing in his or her living area.)

A prisoner's personal property, including clothing, could not exceed that which could be contained in one duffel bag or one footlocker for a prisoner in a facility having a level IV, V, or VI designation; or, for a prisoner in a facility having a level I, II, or III designation, one duffel bag and one footlocker. The bill would not allow the possession of personal property of a type otherwise prohibited by the DOC.

The DOC would have to begin phasing in the bill's requirements 30 days after its effective date, and would have to implement them fully by January 1, 1990. "Personal clothing" would mean any clothing that was not a uniform or standardized clothing either issued by a correctional facility or purchased by a prisoner through and with the approval of the facility. "Security designation" would mean one of six levels of restrictiveness as determined by the Department, with level I being the least restrictive and level VI being the most

restrictive.

Proposed MCL 800.42

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

### **ARGUMENTS**

#### **Supporting Argument**

Limiting the amount and types of personal property that prisoners could keep in their cell is a security and management issue: the more items allowed in a cell, the greater the potential for hidden contraband and make-shift weapons. The necessity to oversee all of the various items in a prisoner's cell, and to search them in the event of "shake down", results in more time demands on and greater potential danger to prison staff. 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.

**Response:** Restricting prisoners' personal property privileges is unnecessary: security and management concerns can be addressed through more effective enforcement of current DOC policies. The claim that allowing prisoners to keep personal property in their cell 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 (693 in 1987 and 491 in 1988), at the same time that prison population was increasing by 16%. In addition, the two recent murders of corrections officers are attributable not to personal property privileges, but to noncompliance with departmental policy and professional standards.

#### **Supporting Argument**

The DOC policies and living arrangement in prisons should be more severe for those in higher security facilities, and there should be incentives for prisoners to earn 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 those incentives.

**Response:** The property restrictions proposed in the bill (and in the enjoined policy directives and emergency rules) 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.

#### **Supporting Argument**

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.

**Response:** The implementation of a supermax facility in Ionia is not necessarily contingent upon the enjoined policy directives. Indeed, the challenge to the proposed policies reportedly was underway for several months before the DOC even brought up any connection to supermax.

#### **Opposing Argument**

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.

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#### **A8990/S15A**

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.