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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 583 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Lana Pollack
Committee: Criminal Justice and Urban Affairs

Date Completed: 6-11-90

RATIONALE

Public Act 44 of 1961 provides that, if a person is arrested on a misdemeanor charge and a magistrate is not available for arraignment or an immediate trial cannot be held, the person may be released after posting an interim bond or, without posting a bond, on his or her own recognizance. Reportedly, the interim bond provision often results in the arrested person's quick release from custody. Although such speedy procedures may be desirable in most cases, many believe that a "cooling off" period for domestic assault offenders would be useful in deterring the offender from committing further assaults. Some people feel that those arrested on misdemeanor charges of domestic violence offenses should not be eligible for quick release upon payment of an interim bond, due to the passionate and violent nature of the crime and the offender's likelihood to return to the home and repeat the assault.

CONTENT

The bill would amend Public Act 44 of 1961 to prohibit or delay the release of misdemeanor prisoners on interim bond or their own recognizance in cases of domestic assault. The bill would require that a person be held until he or she was brought before a magistrate for arraignment if the person were arrested, with or without a warrant, for simple assault (MCL 750.81) or aggravated assault (MCL 750.81a), or a substantially corresponding local ordinance, and the person were a spouse or former spouse of, or resided in or had resided in the same

household as the victim. If a magistrate were not available within 24 hours, however, the person would have to be held for 20 hours, then could be released on interim bond or his or her own recognizance.

MCL 780.581-780.583a

FISCAL IMPACT

The bill would have no fiscal impact on the State and an indeterminate fiscal impact on local units of government. Incarceration costs to local units of government could rise due to the fact that those individuals who would otherwise post bond or be released on their own recognizance would have to be held in local jails for at least 20 hours if a magistrate were not available. According to State Police crime statistics for the State, in 1988 there were 15,274 nonaggravated assault victims, of whom 7,884 (or 52%) were spouse or resident victims. The total number of aggravated assault victims was 2,468, of whom 1,132 (49%) were spouse or resident victims.

ARGUMENTS**Supporting Argument**

Department of State Police statistics reveal that approximately one-half of all assaults committed in Michigan in 1988 were assaults upon spouse or resident victims. According to testimony before the Senate Committee on Criminal Justice and Urban Affairs, domestic assaults often are repeated, especially in cases

in which the offender is released from custody in a relatively short amount of time.

District Court 14B in Ypsilanti Township has implemented a program to deal more effectively with domestic assault cases, one aspect of which is to hold persons arrested on domestic assault charges until they appear before a magistrate, rather than releasing them on interim bond. The court reports that incidents of spousal abuse in Ypsilanti Township have decreased by 45% in the two years of the program's existence. One of the keys to deterring subsequent assaults is keeping the offender in custody after an initial arrest. This "cooling off" period allows offenders to reflect on their assaultive behavior and its consequences, while giving the victim time to make rational decisions, to seek legal help and/or other emotional support, and to escape from exposure to violence. While the 14B District Court believes that the authority to refuse interim bond to domestic assault detainees already exists in statute, a specific mandate to do so could decrease the rate of domestic assaults, especially subsequent assaults, statewide.

Opposing Argument

The bill could result in constitutional problems pertaining to due process and equal protection. The bill would create an incongruity under the law in the treatment of misdemeanants. One class of misdemeanants (those charged with domestic assault offenses) would be treated differently than all other misdemeanants.

Response: The bill would treat domestic assault offenders differently than other misdemeanants, but justifiably so. The fact that there are other exceptions in law for the handling of spousal abuse cases (e.g., authorization for warrantless arrests) provides precedent for the differential treatment. In addition, the bill would not grant new authority to detain, but simply give specific mandatory authority to do so. The Act already allows interim bond to be waived if the arrested person is under the influence of drugs or alcohol, is wanted by law enforcement authorities on another charge, or is unable to identify himself or herself, or if "it is otherwise unsafe to release" the person. Since there is no clear and established standard for "otherwise unsafe to release", however, law enforcement and judicial officials have been reluctant to

detain domestic assault arrestees on those grounds. The bill would clearly state that domestic assault offenders were to be detained without the opportunity for posting an interim bond.

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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.