House
Legislative
Analysis
Section

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

DOC MENTAL HEALTH PROGRAM

House Bill 4591 (Substitute H-5)
First Analysis (7-1-93)

Sponsor: Rep. Beverly Hammerstrom
Committee: Mental Health

THE APPARENT PROBLEM:

The U.S. Department of Justice initiated an investigation into conditions at three Michigan prisons as a result of riots which occurred in 1981. On July 13, 1984, the consent decree in United States of America v The State of Michigan was entered in Federal District Court for the Western District of Michigan by Judge Richard A. Enslen. This consent decree, known as USA v Michigan, addressed many areas of prison conditions and services, including sanitation, safety and health; medical care (including mental health care); fire safety; overcrowding and protection from harm; and access to courts. With regard to mental health care in particular, the consent decree says that "the State must provide adequate treatment upon timely identification for those inmates with serious mental illness, including manifest, substantial behavioral or physiological dysfunctions associated with psychosis, suicide, the threat of suicide, self-mutilation, or psychotic episodes involving violence towards others."

The "consent decree" actually consists of a two-part document containing both the consent decree and a state plan for compliance, which was entered as an agreed upon remedy for the violations cited by the federal Justice Department. The state plan required the Department of Corrections, within 270 days, to submit a "professionally designed plan" to be fully and continuously implemented within three years after its adoption or approval. In April, 1985, a task force of experts was formed to develop this plan, and after several delays the plan was submitted in October, 1985. However, the DOC was reluctant to implement the plan for a number of reasons, and at a hearing in February, 1986, the federal district court ruled that the state could submit a modified mental health plan by March, 1986. The court also found the state in contempt because the original plan was not submitted on time and other deadlines had been missed, but no sanctions were imposed.

In March, 1986, the state submitted a modified mental health care plan, but at a hearing on May 9, 1986, the court refused to accept the modified plan and ordered the state to purge its contempt by submitting by June 9, 1986, a "schedule and specification" designed to cure mental health care deficiencies in the consent decree institutions (the State Prison of Southern Michigan, the Michigan Reformatory, the Marquette Branch Prison, and the Charles Egeler Facility) and to use the recommendations of the April, 1986, report of the court-appointed independent expert (which called for providing mental health beds for 3.2 percent of the prison population, with one percent of these beds devoted to acute care, and a staff-to-patient ratio of 1.7 to 1.0). The state submitted an implementation schedule on June 9, 1986, but because the prison population grew so rapidly between 1986 and 1989, the goal of beds for 3.2 percent of the prison population still was not being met. At a hearing on October 2, 1987, the court ordered the state to submit, by June, 1988, an updated schedule necessary to meet the percentage-based inpatient requirements of the May 9, 1986, court order based on the projected inmate population in June, 1990. The state did submit a schedule in June, 1988, that, among other things, proposed the construction of (and a development schedule for) a new acute care facility to provide for the one percent inpatient acute bed requirement. However, by the time the hearing was held in September, 1988, the site selection deadline proposed in the schedule had been missed, and the court ordered the submission of a revised schedule for development of the new facility. Even after a second extension was granted by the court, the state failed to secure a site for the new mental health facility, so in September, 1990, the United States filed a motion for contempt for failure to comply with the schedule to construct a new mental health hospital. On October 15, 1990, the court found the state in contempt and ordered that beginning on

October 22, 1990, a fine of $1,000 per day would be assessed until compliance with the schedule was achieved and on March 15, 1991, the fine would increase to $10,000 per day.

On March 13, 1991, the governor met with Judge Enslen and indicated his intention to convene an advisory group on correctional mental health issues. This advisory group was convened on March 18, 1991, and on May 15, 1991, the group issued its final report. The report called for the Department of Mental Health to assume responsibility for mental health services to prisoners within the Department of Corrections, and for the development of the new mental health facility by the conversion of Huron Valley Women's Facility. On May 29, 1991, the parties met and negotiated a stipulation which was accepted by the court, and with the acceptance of the stipulation the court purged the state of contempt.

Legislation has been introduced that would implement in statute the changes in the way the state provides mental health services to prisoners in state correctional facilities.

THE CONTENT OF THE BILL:

The bill would rewrite parts of the chapter (Chapter 10, "Criminal Provisions") of the Mental Health Code which deals with the provision of mental health services to prisoners in correctional facilities. More specifically, until October 1, 1995 (when the current act's language would once again take effect) the bill would replace the current judicial procedures for involuntary treatment of prisoners to an administrative procedure involving a panel of clinical specialists.

Mental Health Code criminal treatment provisions. Currently, the Mental Health Code requires prisoners to be provided with certain mental health services, either by local community mental health (CMH) services, the Department of Corrections (DOC) or by the Department of Mental Health (DMH). Prisoners in local detention facilities who request mental health services receive these services from the appropriate community mental health program, and the Department of Mental Health establishes by rule procedures for the voluntary admission of these prisoners into state mental health facilities. Involuntary hospitalization of prisoners in local detention facilities is handled under Chapter 4 ("Civil Admission and Discharge Procedures: Mental Illness") of the code.

The code requires that prisoners in state correctional facilities be provided with both general and specialized mental health services. The Department of Corrections (DOC) is responsible for providing "on site" services for prisoners with "prolonged, continuing, or constant condition[s]" that don't require specialized care. The Department of Mental Health is responsible for providing psychiatric inpatient services, at its Center for Forensic Psychiatry, for mentally ill or mentally retarded prisoners requiring intensive or specialized care. However, unless ordered by the probate court, prisoners cannot be transferred to the Center for Forensic Psychiatry without first having been told of possible treatment methods and without having first given written consent to the transfer and treatment.

The Corrections Mental Health Program. Until October 1, 1995, the bill would delete the requirement that prisoners be provided with the currently specified services, and instead would require the Department of Corrections to establish and operate a corrections mental health program to provide mental health services for mentally retarded or mentally ill prisoners needing such services. The DOC could contract with the Department of Mental Health (DMH), and only the DMH, to operate the corrections mental health program. The director of the DOC would appoint the director of the corrections mental health program. The director of the program would have to have an advanced degree and a minimum of five years' experience in a mental health field.

Voluntary treatment. Currently, if a prisoner wants to be voluntarily transferred from a state prison to the Center for Forensic Psychiatry Program, the warden must transfer the prisoner. The prisoner consults with a recipient rights officer of the Department of Mental Health, to make sure that the prisoner is informed of possible treatment methods and has given written consent to the transfer and treatment. Voluntarily transferred prisoners who want to return to prison cannot be kept more than three days (excluding Sundays and legal holidays) after making the request in writing, unless the director of the center determines that the prisoner continues to need treatment in the center. In such cases, the director (or designee) must file, with the probate court, an application for continued

hospitalization. The application must be accompanied by two physicians' certificates (one of whom must be a psychiatrist) supporting the application. A hearing (described below) is held on the application, and the center may keep the prisoner pending the hearing decision.

The bill would set up a procedure by which prisoners could request to be voluntarily admitted to the corrections mental health program. If a prisoner wanted to be voluntarily admitted to the corrections mental health program, the warden would have to transfer the prisoner, if necessary, to an appropriate location to be examined by a psychiatrist (for mental illness) or psychologist (for mental retardation), whichever was appropriate. If the examining practitioner certified to the corrections mental health program that the prisoner was mentally ill or mentally retarded and was clinically suited for admission, the program would have to provide the prisoner with a written individual plan of services. The prisoner would be admitted to the program upon his or her consent to the plan.

Normally, a prisoner voluntarily in the corrections mental health program, who had had to be transferred for treatment, could not be kept in the program more than three days after giving written notice that he or she wanted out of the program and to be returned to the general prison population. However, if the director of the corrections mental health program determined that the prisoner continued to need treatment, the director would have three days after receiving the written request for discharge to notify the prisoner, his or her plenary guardian (if any), and a family member designated by the prisoner of the prisoner's right to a hearing as set forth under the bill. The prisoner could not be medicated for 24 hours before the hearing, and if the hearing committee found that the prisoner did not require continuing treatment, the prisoner would be placed according to normal DOC procedures. However, if the hearing committee found that the prisoner continued to need mental health services, the prisoner would not be released from the program and would have to continue in the program.

Initiation of involuntary treatment. Currently, a "person" (such as a corrections officer, a health professional, or a mental health professional, or someone else) can file with the warden a written notice alleging that a particular prisoner is mentally ill or mentally retarded. When wardens receive such notices, they notify the DOC, which then selects a psychiatrist to examine the prisoner. If the psychiatrist decides that the prisoner does need intensive or specialized care or psychiatric inpatient services, the warden must immediately notify the Center for Forensic Psychiatry program.

Under the bill, a "person" would be able to file with a warden a written notice alleging that a particular prisoner was mentally ill or mentally retarded and required treatment. When the warden received such a notice, he or she would have to contact the corrections mental health program, which then would initiate an evaluation by a mental health professional. If a warden received such a report from a mental health professional, the warden would have to have the prisoner examined by a psychiatrist (for mental illness) or a psychologist (for mental retardation), either in the prison or some "appropriate" facility "as soon as administratively possible." If the psychiatrist (or psychologist) determined that the prisoner was mentally ill (or mentally retarded), he or she would "execute" a "certificate of findings" to that effect and recommend suitable treatment available within the corrections mental health program.

Voluntary acceptance of recommended treatment. Currently, if the prisoner agrees to a recommended transfer, the warden must transfer the prisoner to the Center for Forensic Psychiatry Program. Upon transfer, the prisoner must be given a consultation with a recipient rights officer from the Department of Mental Health. The officer determines whether the transfer was properly made, confirms that the prisoner was informed of possible treatment methods, and confirms that the transfer was made voluntarily.

Under the bill, if the prisoner agreed to the recommended treatment, he or she could execute a waiver of hearing and consent to treatment.

Current involuntary treatment hearing process. Currently, before a prisoner can be hospitalized for mental health treatment against his or her will (or, in the case of prisoners who voluntarily agree to hospitalization but then decide that they want to return to the general prison population, contrary to the judgement of the director of the Center for Forensic Psychiatry that the prisoner continues to need inpatient treatment), the decision whether or not to proceed with hospitalization -- or continued

hospitalization -- must be decided by the probate court.

If a prisoner who transferred voluntarily to the forensic center wants to be discharged but the director of the center determines that the prisoner needs continuing treatment, the director (or designee) must file an application for continued hospitalization with the probate court of the county in which the prisoner's "home" prison is located. The application has be accompanied by certificates from two physicians, at least one of whom must be a psychiatrist, supporting the findings of the program director. A hearing then must be held on the application in accordance with the procedures described below. The center may continue hospitalization pending disposition of the application.

If a DOC psychiatrist decides that a prisoner should be transferred to the center but the prisoner disagrees, a second psychiatric evaluation must be made of the prisoner and a judicial hearing process must be followed. In cases where a DOC psychiatrist decides that a prisoner should be involuntarily transferred, the Department of Mental Health selects another psychiatrist to examine the prisoner. Whether or not the DMH psychiatrist concurs with the DOC psychiatrist, a hearing process must be followed. (If the two psychiatrists disagree, an independent psychiatrist -- selected and agreed upon by both departments -- is called in, and if the independent psychiatrist agrees with the DOC psychiatrist, the same hearing process is started.) Prisoners transferred to DMH facilities (such as the Center for Forensic Psychiatry Program) remain under the authority of the DOC, specifically with regard to leaving the DMH facility.

When a warden receives certification from a DOC psychiatrist that a prisoner is mentally ill or mentally retarded and should be involuntarily transferred to the forensic center, the warden must file a petition (including the required psychiatric certificates) with the probate court of the county in which the prison is located. The hearing must be held no more than seven days after the court receives the petition, and within four days of receipt, the court must see that the prisoner gets a copy of each certificate executed in connection with the petition and a notice of all of the prisoner's rights, as follows: the right to a full hearing, the right to be present at the hearing and represented by counsel, the right to demand a jury trial, and the right to an independent medical examination at the prisoner's expense (or at the state's expense, for indigent prisoners). Timely notice of the petition and of the time and place of the hearing must be given to the prisoner; the prisoner's attorney; the petitioner; the warden; the guardian, if any, of the prisoner; and to other relatives or people the court deems appropriate. Hearings may be held anywhere within the county that the court decides.

Unless the court has been notified of a prisoner's counsel, within 48 hours after receiving a petition the court must appoint counsel to represent the prisoner. The prisoner may waive the right to counsel (after consulting with the appointed counsel), and must be present at all hearings unless also waiving this right (and the court is satisfied that the prisoner's attendance at the hearing would be harmful). Prisoners' counselors must be allowed "adequate" time for investigation and preparation for the hearing, and must be allowed to present the evidence necessary for a proper determination of the prisoner's mental illness or mental retardation.

Legal counsel for the petitioner is required to participate in hearings convened by the court and must offer proofs that establish that the prisoner is mentally ill or mentally retarded. Parties to the proceeding may present documents and witnesses and may cross-examine witnesses. The court must receive all relevant, competent, and material evidence offered, and rules of evidence in civil actions are used unless specific exceptions have been required by law or court rule. Petitions for continuation are not granted unless stipulated in writing or requested on the record, and then only if based on good cause shown.

Prisoners are not to be found mentally ill or mentally retarded unless at least one psychiatrist who has personally examined the prisoner testifies in person or by written deposition at the hearing (and written depositions are allowed only if the prisoner's attorney had the opportunity to be present during the taking of the deposition and to cross-examine the psychiatrist giving the deposition). The prisoner may waive the testimony or deposition.

If the court finds that a prisoner is mentally ill or mentally retarded, it enters a finding to that effect and must order the prisoner to be transferred to the forensic center for treatment, initially for not more than 90 days. The director of the center may request extensions of the prisoner's hospitalization,

basically for two additional 90-day periods. The request for an extension must be made to the court at least fourteen days before the expiration of the order. The court may authorize a second 90 days of hospitalization and treatment after notice and opportunity for testimony, but must hold a hearing before authorizing a third 90-day continuation. If a fourth continuation is requested, the hearing process must start all over again. Petitions for renewal orders must be accompanied by a certificate executed by a psychiatrist and must contain the following: the reasons for the director's determination that the prisoner continues to require hospitalization; a statement describing the treatment program provided to the prisoner; the results of the course of treatment; and a clinical estimate as to how much longer treatment will be required.

Courts may not find that a prisoner is mentally ill or mentally retarded unless that fact has been established by clear and convincing evidence. If the court finds at any hearing that the prisoner is not mentally ill or mentally retarded, it must order the petition to be dismissed. Copies of court orders issued under this part of the Mental Health Code must be given to the prisoner, his or her attorney, the warden, and the director of the hospital in which the prisoner is or will be a patient.

Upon authorization of the director of the center, prisoners being treated at the forensic center may be transferred between state mental health facilities. However, if the prisoner objects to the transfer, he or she is entitled to an administrative hearing. If the transfer is an emergency transfer, the hearing may be held at the receiving facility. Prisoners transferred to other mental health facilities cannot be mixed with the other patients unless the director of the forensic center, after consulting with the Department of Corrections, decides that the prisoner and other patients "show the same propensity for dangerous behavior" and require similar treatment plans. Prisoners transferred to mental health facilities other than the forensic center are entitled to all of the rights and privileges afforded to other mental health recipients except those specifically excluded or modified by law. Transferred prisoners' freedom of movement can be restricted only to the extent necessary to provide mental health services to them, to prevent injury to them or to others, or to prevent substantial property damage. However, security precautions appropriate to the condition and circumstances of the prisoner may be taken.

Proposed involuntary treatment hearing process. The bill would delete most of the current judicial involuntary treatment hearing process and replace it instead with an administrative hearing process.

If a prisoner refused recommended mental health treatment or services or if the corrections mental health program determined that a voluntary admittee to the program who wished to leave the program but continued to need mental health services, the corrections mental health program would appoint a hearing committee to decide the matter. The hearing committee would consist of a psychiatrist, a psychologist, and one other mental health professional. None of the hearing committee members could be involved in the prisoner's treatment or diagnosis at the time of the hearing, nor could the prisoner be medicated for 24 hours before the hearing.

The hearing would have to be held not less than 24 hours nor more than seven business days after the prisoner (or his or her plenary guardian, if applicable) had received the required documents for initial involuntary treatment or to involuntarily continue treatment voluntarily entered by a prisoner wishing to stop.

If the examining psychiatrist or psychologist determined, in addition to needing treatment that the prisoner was refusing, that the prisoner was a danger to himself, herself or to others, the psychiatrist or psychologist could order involuntary administration of medication pending an administrative hearing (though prisoners could not be medicated for 24 hours before the hearing). When a psychiatrist had completed a certificate of findings, the warden would have to give the prisoner (or his or her plenary guardian) the following at least 24 hours before the hearing: a copy of the certificate, a copy of the psychiatrist's report of the examination, and a "notice of hearing" that explained the hearing procedures and rights.

At the request of the prisoner, and so long as the hearing was not delayed in order to enable the designated person attend, the prisoner's plenary guardian (if any) and a family member or friend (who was not in prison or on parole or probation) could attend the hearing.

The hearing committee would have to consider all of the following:

* the report of the mental health professional alleging that the prisoner was mentally ill or mentally retarded,

* the psychiatrist's or psychologist's certificate saying whether or not he or she believed the prisoner was mentally ill or mentally retarded;

* proof that the notice of hearing had been served to the prisoner (and his or her plenary guardian, if any, and designated family member);

* proof that the prisoner hadn't been medicated for 24 hours before the hearing; and

* any other "admissible evidence" (i.e. "relevant, nonrepetitious, and of a type relied upon by a person in the conduct of everyday affairs") presented at the hearing.

The hearing committee would have to prepare an official record of the hearing, including all of the above information. The hearing would have to be recorded, but wouldn't have to be transcribed unless someone so requested (in which case, the party requesting the transcription would have to pay for it).

The hearing committee would decide, by majority vote (with one of the votes being that of the psychiatrist on the committee), whether or not the prisoner was mentally retarded or mentally ill and whether or not the proposed mental health treatment services were suitable to the prisoner's condition. If the hearing committee found that the prisoner was mentally retarded or mentally ill but that the proposed services weren't suitable to the prisoner's condition, it would have to order available services in the corrections mental health program that were suitable. In the case of a voluntary admittee involuntarily detained, if the hearing committee determined that the prisoner continued to need mental health services, the corrections mental health program would continue to provide the those services. If the hearing committee found that the voluntary admittee did not need mental health services, the prisoner would be placed according to normal procedures of the DOC.
After reaching a decision, the hearing committee would have to prepare a report and order stating the committee's findings and their basis. Within 24 hours after the hearing, the committee would have to provide a copy of the report and order to the prisoner.

Appeals. A prisoner could appeal the decision of the hearing committee to the director of the corrections mental health program if he or she filed the appeal within 48 hours after receiving his or her copy of the committee's report and order. The director would be required to make a decision within two business days after receiving the appeal.

A prisoner could appeal the decision of the director of the corrections mental health program under the Revised Judicature Act (MCL 600.631), but no oral argument would be allowed. During this appeal, the director of the corrections mental health program would be allowed to carry out the hearing committee's proposed treatment.

Extensions of involuntary treatment. As currently is the case, an initial order for treatment would be for not more than 90 days. However, if the treating psychiatrist believed that the prisoner needed mental health services beyond the initial 90 days, he or she could request from the director of the corrections mental health program an additional 90-day treatment period. The psychiatrist would have to file a report with the director of the program at least 14 days before the first 90-day period expired, and (after a hearing, if a hearing was requested by the prisoner) a hearing committee could authorize the continued care (after receiving the report and proof that the prisoner had been notified that he or she could have a hearing).

The treating psychiatrist could request a second 90-day extension of mental health services to the prisoner by the same procedure as for the first extension. If the prisoner requested a hearing, a hearing committee could authorize continued care for up to an additional 180 days. If, after that time, the treating psychiatrist still believed the prisoner needed continuing mental health services, he or she would request an initial order of admission under the hearings process. If, at any hearing held during these requests for extensions of treatment, the hearing committee found the prisoner not to be mentally retarded or mentally ill, it would enter a finding to that effect and the prisoner would be returned to the regular prison population according to normal DOC procedures.

Prisoner rights. A prisoner would have the following hearing rights under the bill:

* attendance at the hearing;

* presentation of evidence (including witnesses and cross-examination of witnesses), unless the hearing committee found that "the presentation, confrontation, or cross-examination would present a serious threat to the order and security of the facility or the safety of the prisoner or others; and

* the help of a state employee who was "familiar with" mental health services and who was designated by the director of the DOC as a "lay advisor";

In addition to the above hearing rights, the bill would specify that prisoners receiving services from the corrections mental health program would have the following rights (in addition to rights, benefits, and privileges guaranteed by other laws, the state constitution, and the U.S. Constitution):

(1) Prisoners would be entitled to receive mental health services suitable to their condition and in a manner that protected and promoted their basic human dignity.

(2) Except where the right conflicted with a DOC regulation or policy affecting security (of a prison or the protection of prisoners, employees, or the public), prisoners would be entitled to certain rights listed in Chapter 7 of the Mental Health Code ("Rights of Recipients of Mental Health Services"), including the right to be notified of their rights; the right to a comprehensive physical and mental examination; the right to an individualized written plan of services; the right to be informed of his or her clinical status and progress; the right to refuse surgery or electro-convulsive therapy; protection from abuse; restrictions on physical restraint or seclusion; freedom of movement, within certain limits; and the right to a confidential record, to the extent modified by the bill.

The bill would explicitly state that if a right listed in this section did conflict with a DOC security regulation or policy, the DOC regulation or policy would prevail. The bill also would say that this section listing prisoners' rights would not affect the regulations and policies of the DOC regarding the operation of prisons.

Transfers among facilities. The bill would say that a "person" (rather than, as currently is the case, a prisoner) could be transferred to the Center for Forensic Psychiatry Program or between state mental health facilities upon authorization by the director of the forensic center. People who objected to being transferred to another state mental health facility still would be entitled to administrative hearings (under departmental rules regarding the need and appropriateness of the transfer), though if an emergency transfer were required (and the person objected to the transfer), the hearing would (as it is now) be held at the receiving facility.

As is now the case, people transferred to other mental health facilities would not mix with the other patients unless deemed appropriate by the director of the forensic center, after consulting with the DOC. However, the bill would eliminate the part of law saying that prisoners' freedom of movement would not be restricted more than was necessary for mental health services, safety of the prisoners or others, or to prevent substantial property damage. The bill would keep the existing provision that people transferred under this part of the code are entitled to all the rights and privileges afforded to other mental health recipients under Chapter 7 except those rights and privileges specifically excluded or modified by law.

Discharge from treatment. Currently, prisoners admitted to the forensic center who are nearing discharge from the center must be given the benefits of a modified placement review committee process and discharged either when the prisoner no longer needs the intensive or specialized care or inpatient services of the center or when the prisoner's criminal sentence expires (less "good time" and other statutory reductions). Prisoners discharged from the forensic center before their criminal sentences expire trigger a notification and report by the Department of Mental Health to the DOC of the pending discharge, the condition of the prisoner, and specific recommendations for continuing care of the prisoner. Prisoners discharged before their criminal sentences are up are returned to prison, unless paroled or otherwise released from the authority of the DOC. In the case of a prisoner discharged from the forensic center because his or her criminal sentence has expired, the head of the mental health facility can file a petition (at least fourteen days before the sentence expires) with the probate court of the prisoner's county of residence saying that the prisoner still requires treatment or meets the criteria for judicial admission.

Under the bill, a prisoner admitted to the corrections mental health program would be

discharged when he or she either no longer needed mental health services or was paroled or discharged from prison. If a prisoner were to be discharged from the corrections mental health program before his or her prison term was up, the director of the program would first notify the DOC of the pending discharge and send a full report to the DOC on the prisoner's condition. If a prisoner were paroled or discharged from prison and the corrections mental health program believed that he or she needed treatment or met the criteria for judicial admission, the director of the corrections mental health program would file a petition, at least 14 days before the parole date or date of discharge, with the probate court in the prisoner's county of residence saying that the prisoner needed treatment.

"Good time" credit. As is currently the case, the bill would continue to credit prisoners with those good time credits and other statutory reductions of their prison terms to which they were entitled while they were in the corrections mental health program. The bill also would specify that prisoners would continue to be subject to all disciplinary credits that were not attributable to their mental illness or mental retardation. Similar to what is in current law, when prisoners were admitted into the corrections mental health program, the DOC would notify the director of the mental health corrections program of when the prisoner's prison term would expire and any reductions of the sentence recorded up to that time.

Treatment services for former prisoners. Currently, upon referral by the DOC, the Department of Mental Health (DMH) is responsible for assuring that needed "aftercare and reintegration" and community-based mental health services are offered to mentally ill and mentally retarded people leaving prison. Upon request from the DOC, community-based mental health services must be provided by the DMH throughout a prisoner's parole period. The bill would add the proviso that "to the extent provided by law" the DMH provide community-based mental health services to paroled prisoners.

Joint report to the legislature. Not later than April 1, 1995, the Department of Corrections and the Department of Mental Health would have to submit a report to the legislature based on a joint evaluation that included certain information regarding the preceding 18-month period and recommendations for appropriate changes in mental health programs for prisoners, including whether additional services were needed for developmentally disabled prisoners. The information would have to include, but would not be limited to the following:

* A description of any delays in the provision of mental health services to prisoners, and the reasons for those delays;
* the total number of prisoners served;
* the number of hearings held under the bill and the disposition of each hearing;
* the number of developmentally disabled prisoners in the corrections system and a description of the services those prisoners had received; and
* the characteristics of the prisoners served and a description of the services they had received (including the length of stay in the corrections mental health program and the type of treatment received).

MCL 330.2001a et al.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The major issue now remaining in the 1984 USA v Michigan consent decree case deals with the provision of adequate mental health care in the corrections system. As the result of the recommendations of a governor's task force, the Department of Corrections (DOC) and the Department of Mental Health (DMH) have entered into a contract which requires that DMH deliver mental health care to DOC prisoners. The DMH is currently assuming this responsibility and the new corrections mental health hospital is under construction at the site of the former Huron Valley Women's Facility in Ypsilanti. The bill, which is modeled on a system used in the state of Washington (and which was recently tested in the U.S. Supreme Court in Washington v Harper and allowed to stand) would simply place in statute an existing arrangement between the DOC and the DMH.

Against:

The bill would eliminate the existing independent probate due process with an inferior administrative process carried out exclusively within the Department of Corrections, thereby severely curtailing the fundamental rights Michigan has historically afforded all citizens, including prisoners, when the need for mental health services has been

examined. What is more, the bill would substantially reduce a prisoner's access to the rights that Chapter 7 of the Mental Health Code ("Rights of Recipients of Mental Health Care") provides to all other mental health service recipients in the state. In addition, the bill provides no due process mechanism that a prisoner who has been denied treatment can use. This is particularly troublesome in the case of prisoners, because it is impossible for prisoners to independently arrange for mental health services from an alternate service provider. Nor does the bill provide prisoners with a meaningful appeal of decisions ordering treatment against their will. Finally, despite the mention of developmentally disabled prisoners and services in the section of the bill requiring a report to the legislature in 1995, the rest of the bill contains no language requiring the provision of services to developmentally disabled prisoners. The promise of a future evaluation of the need for such services affords no immediate relief to the more than 200 estimated prisoners currently in prison needing these services.

Response:

Proponents of the bill argue that while, on the face of it, the bill would eliminate some very important judicial safeguards, common practice has consistently shown that in reality these safeguards often have been a bigger hinderance to the necessary provision of services than a benefit. In the first place, under the current law, the "provision of mental health services" to prisoners in state correctional facilities boils down to transfer to the state forensic center. Not all prisoners needing mental health services need inpatient services, and the bill would, in many respects, mirror current community mental health services, in the sense of providing a continuum of care, from on-site programs to inpatient hospitalization for acute care. Secondly, however, the current judicial process is slow, sometimes delaying needed treatment, while the adversarial nature of the judicial process can be unnecessarily cruel to prisoners in need of mental health services. Currently, a petition must be filed with the probate courts in situations where prisoners are considered a threat to themselves or others but will not accept mental health services. The petition could wait weeks before it is heard by the court, and even when it is heard, the judge depends heavily on the judgement of the psychiatrist on how to handle the case. It is more efficient and humane to have a non-adversarial panel of mental health professionals decide the question of what mental health services prisoners need and decide how to meet those needs. Ideally, this method will help insure that prisoners will receive timely and appropriate care, which has not always been the case in the past.

POSITIONS:

The Department of Mental Health supports the bill. (6-30-93)

A representative of the governor's office testified in support of the bill. (6-25-93)

Michigan Protection and Advocacy Service, Inc. opposes the bill. (6-29-93)

The Alliance for the Mentally Ill (AMI) of Michigan opposes the bill. (6-20-93)

The ARC/Michigan (a mental health advocacy group) opposes the bill. (6-30-93)