

PRISON UNIFORMS

Senate Bill 57 as passed by the Senate First Analysis (5-27-97)

Sponsor: Senator Virgil C. Smith, Jr.
Senate Committee: Judiciary
House Committee: Corrections

THE APPARENT PROBLEM:

In 1988, the Department of Corrections (DOC) attempted to implement policies that limited the amount of personal property, including personal clothing, that prisoners could wear or possess. 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. 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 class-action suit brought by inmates (*Cain et al. v Michigan Department of Corrections*). The prisoners claim that the restrictions on personal property constitutes an unconstitutional taking of property without compensation.

During this period, the property-limiting policies specified in Policy Directive BCF-53.01 were incorporated into Public Act 169 of 1989, in the belief that specifying the property-limiting policies in statute would give them the force of law necessary to overcome the legal challenge against them. Specifically, Public Act 169 regulated 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. Generally, under the act, prisoners in levels IV, V, and VI facilities can not wear, or have in their living areas, any personal clothing. However, the Ingham County Circuit Court also enjoined implementation of the provisions of Public Act 169.

Cain et al. did not go to trial until very recently. Until the case is decided, the injunction that restrains the department from implementing prisoners' personal property restrictions remains in effect. However, the 1994 escape of ten inmates from the Ryan Correctional Facility on the east side of Detroit has renewed interest in the subject. Residents of the neighborhoods adjacent to the Ryan facility have protested that, had the escapees worn uniforms, it would have been easier for police to distinguish them from local residents. Since many of the state's correctional facilities are situated near residential areas, legislation has been introduced that would protect these neighborhoods by requiring that

those prisoners who are considered most troublesome -- those in higher security correctional facilities -- be required to wear uniforms. In addition, in order to circumvent the "takings" issue specified in the *Cain et al.* complaint, the legislation would require that the DOC pay the expenses of having prisoners' personal property mailed to their family or friends.

THE CONTENT OF THE BILL:

Currently, under the prison code, the personal clothing of prisoners in correctional facilities is restricted according to each correctional facility's security designation. Generally, a prisoner in a facility with a security designation of I, II, or III may wear personal clothing, and a prisoner in a correctional facility with a security designation of IV, V, or VI may not, as follows:

- A prisoner in a correctional facility with a security designation of I, II, or III may wear or have personal clothing in his or her living area, within certain specified limits;
- A prisoner in a correctional facility with a security designation of IV, V, or VI may not wear any personal clothing, nor have any in his or her living area; except that
- A prisoner in a level IV facility may keep one set of personal clothing in his or her living area, as determined by the department, to wear for court appearance or during visits; and a prisoner in a facility with a level V or VI designation must be provided civilian clothing by the institution for court appearances.

Senate Bill 57 would amend the code (MCL 800.42 and 800.44) to provide new personal clothing requirements to limit permission to wear personal clothing to a prisoner in a correctional facility with a security designation of I or II, and to require other prisoners to wear uniforms, as follows:

- All prisoners, except those in level I or II facilities, would be required to wear uniforms at all times. The Department of Corrections (DOC) would provide these uniforms and would determine their color.
- A prisoner in a level I or II facility could wear or have personal clothing in his or her living area.
- A prisoner in a level III, IV, V, or VI facility would not be permitted personal clothing in his or her living area, except that a prisoner in a level III or IV facility could keep one set of personal clothing -- as determined by the department -- in his or her living area to wear for court appearances or during visits.

The code defines "security designation" as one of six levels of restrictiveness enforced at each correctional facility, with Security Level I being the least restrictive, and Security Level VI being the most restrictive. "Personal clothing" is defined under the code to mean any clothing that is not a uniform or other standardized clothing issued by the department. Under the bill, "security designation" would be redesignated "security classification," which would be defined to mean one of six level of restrictiveness enforced in housing units at each facility; and "personal clothing" would be redefined to exclude undergarments.

Disposition of Personal Clothing. Any personal clothing that was not permitted under the provisions of the bill would have to be disposed of by the prisoner within 121 days after the bill's effective date. The clothing could either be sent home with visitors; mailed to a person identified by the prisoner, at the department's expense; or donated to charity. If a prisoner did not dispose of the clothing within the 121-day period, the department would have to determine how to dispose of it.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency (SFA), the bill would increase Department of Corrections' costs. During fiscal year 1995-96, the department purchased from Michigan State Industries (prison industries) pants and shirts for prisoners totaling \$1,484,300. At a cost of \$16.40 per pair of pants and \$11.70 per shirt, or \$28.10 per "uniform" (shirt and pants), the department was able to purchase approximately 52,800 uniforms. While each incoming prisoner is issued two sets of shirts and pants at reception, eligible prisoners may choose to return their uniforms and wear approved personal clothing after leaving reception.

While current law requires prisoners in security levels IV-VI to wear uniforms, this section of law has been enjoined by Judge Giddings of the Ingham County Circuit Court in a prisoner property rights case, *Cain v Michigan Department of Corrections*. As a result, other

than prisoners in administrative segregation, those on outside work assignment, or any other prisoner who chooses to wear a department-issued uniform, all prisoners are currently allowed to wear personal clothing.

There are insufficient data currently available on the number of prisoners who are issued and are wearing uniforms, and how long each uniform lasts. In other words, were the 52,800 uniforms issued last year for 26,000 inmates, two sets apiece, each lasting one year, or were they issued to 13,000 inmates and each uniform lasted six months? The current prisoner population in security levels III-VI is approximately 14,400.

As an example, if one assumed that all prisoners in security levels III-VI were issued uniforms and other personal clothing other than undergarments (i.e., jackets, shoes, hats, etc.) total costs would be approximately \$1.6 million. As mentioned above, however, certain inmates are currently already receiving state-issued uniforms. The increased cost of the bill would be the difference between the cost of uniforms for those prisoners currently issued uniforms, and the number of additional uniforms the department would have to issue because of the bill.

Finally, the department could incur additional costs for mailing a prisoner's personal property. The exact cost would depend on the number of prisoners who chose to have the department mail their personal property, and the weight of each package. If all 14,000 affected prisoners mailed a 20-pound package, assuming a \$5 shipping fee, the cost could approach \$70,000. (2-7-97)

The Department of Corrections notes that the SFA estimate that the bill would result in a cost of approximately \$1.5 million is based on the assumption that each prisoner would receive one or two sets of uniforms each year. However, the department estimates that the cost would be approximately \$3.5 million, based on each prisoner receiving three or four sets of uniforms each year. (5-22-97)

ARGUMENTS:

For:

Senate Bill 57 would accomplish several objectives in higher security correctional facilities. First, the bill would discourage prison escapes by requiring prisoners to wear uniforms and thereby making it easier for police to identify them. Second, by requiring prisoners to dispose of personal clothing, the bill would support Department of Corrections (DOC) policies that provide for strict security standards in higher security facilities. According to the department, allowing prisoners in the state's correctional facilities to have personal property

in their cells has created both management and security problems. Specifically, allowing inmates to retain personal clothing, even if they can't wear it, makes it easier for them to hide contraband, and makes it more difficult for corrections officers to "shake down" the cells. Of no less importance is the fact that the provisions of the bill would serve as an incentive to good behavior, since prisoners would be allowed to increase the amount of personal property they could have if their custody level was reduced.

Further, by requiring that the department bear the cost of returning prisoners' personal clothing, the bill would serve to satisfy constitutional "compensation" requirements should the bill face legal challenges. The Department of Corrections' attempts to implement policies that limit prisoners' personal property and personal clothing were enjoined by the Ingham County Circuit Court in 1988, as were the provisions of Public Act 169 of 1989, which attempted to place these restrictions in statute. In their complaint (*Cain et al. v Michigan Department of Corrections*), the prisoners asserted that the divestiture of their property constituted a taking for which compensation is required under Article X of the state constitution. Among other points, the prisoners asserted -- and the court concurred -- that the failure of the DOC to warn them when they acquired personal property that the department could "unexpectedly and arbitrarily divest them of the same," constituted an arbitrary and capricious act, invalidating the policy as well as substantive due process concepts.

Response:

While the bill attempts to provide a more moderate approach toward limiting prisoners' personal property, the issue of restricting the property privileges of prisoners has yet to be resolved, and it is unlikely the bill's provisions would cure any constitutional deficiencies. A class action suit challenging the DOC's policy directives is currently being heard in Ingham County Circuit Court. Issues bearing on challenged policies should not be enacted while legal challenges to them remain unresolved.

Against:

Requiring prisoners in correctional facilities to wear uniforms is unnecessary and would result in enormous costs. Moreover, since the escape of ten prisoners from the Ryan facility in Detroit in 1994, the DOC has implemented policies that have provided adequate safeguards to discourage escapes. First, the department implemented a policy that separates prisoners of different security levels. Next, additional fencing and many more guard towers were erected around medium and maximum security level prisons. In addition, the department abandoned the "regional" prison concept, under which prisoners were detained in a prison in an area near their homes. As a result of these measures,

the number of prison escapes has been reduced. The mandatory uniform requirement could also result in increased tension among prison populations. As pointed out by prisoner rights groups, it creates the potential for prison staff to harass certain prisoners by moving them back and forward between security levels I or II and higher security levels. Each time a prisoner was moved above security level II, his or her personal clothing would have to be disposed of. In any case, it is pointed out that the designation of a prisoner to a particular security level is often somewhat arbitrary, since, in some situations, overcrowding prevents a prisoner being assigned to an appropriate level.

Against:

Requiring inmates to wear uniforms could have different consequences from those anticipated by proponents of this measure. Critics of the provision point out that an escapee wearing a uniform would be more likely to commit some type of robbery after escaping, since the prisoner would have to obtain clothing that would enable him or her to blend into the community. Thus, this provisions of the bill could decrease, rather than increase, public safety. Furthermore, in large prisons, such the Michigan Training Unit in Ionia, which has 1,331 prisoners, or the State Prison of Southern Michigan in Jackson, which has more than 1,600 prisoners, prisoners' uniforms could serve to make it more difficult for corrections officers to identify inmates when disturbances broke out.

Response:

While the assertion that uniforms would be detrimental among large prison populations cannot be disputed, the charge that prisoner uniforms would result in more robberies by escapees is questionable. Corrections officials point out that prisoners' escapes are usually carefully planned ahead of time. Typically, an escapee will have a friend waiting outside the prison. The friend is there to provide transportation, and could also provide civilian clothing.

In any case, except for a few remote prisons, most prison facilities are located within a ten-mile radius of residential areas, all of which house some prisoners who have a security designation of IV. (Correctional facility security levels are: VI, supermax; V, maximum; IV, close; II and III, medium; and I, minimum). Residents of these neighborhoods would naturally feel safer if the prisoners housed nearby were more easily identifiable.

POSITIONS:

The Department of Corrections (DOC) supports the bill. (5-22-97)

The Michigan Council on Crime and Delinquency supports the bill. (5-22-97)

The Michigan Corrections Organization/SEIU Local 526M has no position on the bill. (5-22-97)

The Office of the Legislative Corrections Ombudsman has no position on the bill. (5-22-97)

The American Friends Service Committee's Criminal Justice Program opposes the bill. (5-22-97)

Analyst: R. Young

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.