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SFA**BILL ANALYSIS**

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House Bill 4669 (as reported without amendment)
Sponsor: Representative Mike Kowall
House Committee: Criminal Law and Corrections
Senate Committee: Judiciary

Date Completed: 6-2-99

RATIONALE

Public Act 164 of 1996 provided for the creation of a youth correctional facility to house offenders up to the age of 19 years old who were juveniles convicted as adults. In addition, the legislation authorized the Department of Corrections (DOC) to contract with a private vendor for the construction and/or operation of the facility, which the Department did. Construction of the youth correctional facility, which is owned and will be operated by the Wackenhut Corrections Corporation, is likely to be completed late this summer. Public Acts 508-514 of 1998 amended various laws to authorize a private vendor operating a youth correctional facility to undertake certain responsibilities granted in statute to the DOC. As the youth facility's opening date approaches, however, it has been noted that the private vendor operating the facility will not be eligible for certain exceptions that allow the DOC to perform strip and body cavity searches of prisoners in DOC facilities under broader circumstances and conditions than are generally allowed. Some feel that these exceptions are necessary to the smooth operation of a correctional facility, whether it is operated by the DOC or by a private vendor.

CONTENT

The bill would amend the Code of Criminal Procedure to exempt a youth correctional facility operated by the Department of Corrections (DOC) or a private vendor from the Code's restrictions on strip searches, and on body cavity searches of a person lodged in a State correctional facility under the jurisdiction of the DOC. The bill also specifies that the DOC's current exemption from those restrictions would apply to DOC facilities that housed prisoners.

Strip Searches

The Code prohibits the strip search of a person arrested or detained for a misdemeanor or an offense punishable only by a civil fine except under specified circumstances; requires that a strip search

be performed by a person of the same sex as the person being searched and in a place that prevents observation by a person not conducting or necessary to assist with the search; requires that an arresting officer prepare a report of the search; and makes it a misdemeanor for a law enforcement officer, employee of a law enforcement agency, or chief administrative officer or employee of a juvenile detention facility to conduct or authorize a strip search in violation of the Code's strip search provisions.

Those provisions do not apply, however, to the strip search of a person lodged in a detention facility by an order of a court or in a State correctional facility under the jurisdiction of the DOC. The bill specifies that the exemption for a DOC facility would apply to a facility housing prisoners and would include a youth correctional facility operated by the Department or a private vendor.

Body Cavity Searches

The Code prohibits the search of a body cavity without a valid search warrant, except as otherwise provided. That search warrant requirement does not apply to a body cavity search of a person serving a sentence for a criminal offense in a detention facility or a State correctional facility under the jurisdiction of the DOC. The bill specifies that the exemption for a DOC facility would apply to a facility housing prisoners and would include a youth correctional facility operated by the Department or a private vendor.

Under the Code, the search warrant requirement also does not apply to a body cavity search of either of the following:

- A person who, as a result of a court order, is lodged in an inpatient facility operated by or under contract with the Department of Community Health or a county community mental health board, if the person is self-

abusive and the search is necessary for his or her protection.

- A person who, as the result of a dispositional order entered after adjudication by the juvenile division of probate court, before January 1, 1998, or by the family division of circuit court, on or after January 1, 1998, is residing in a juvenile detention facility.

If any of the circumstances allowing a body cavity search without a search warrant applies, a body cavity search may not be conducted unless the person conducting the search obtains prior written authorization from the chief administrative officer of the facility or the administrative officer's designee.

The Code requires that a body cavity search be conducted by a licensed physician or a physician's assistant, licensed practical nurse, or registered professional nurse acting with the approval of a licensed physician. If a body cavity search is conducted by a person of the opposite sex as the person being searched, it must be conducted in the presence of a person of the same sex as the person being searched. The Code also requires reports of the search, both for those conducted pursuant to a search warrant and for those authorized to be conducted without a search warrant. A report must be given without cost to the person who was searched, subject to deletions permitted by the Freedom of Information Act. It is a misdemeanor for a law enforcement officer, employee of a law enforcement agency, or chief administrative officer or personnel of a correctional, mental health, or juvenile detention facility to conduct or authorize a body cavity search in violation of the Code's body cavity search provisions. (These provisions apply to body cavity searches performed with or without a warrant.)

MCL 764.25a & 764.25b

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Without the changes that would be implemented by the bill, private operators of the new youth correctional facility will have to follow strict requirements to conduct a strip search and will be forced to get a search warrant in order to perform a body cavity search of a prisoner. Since DOC-operated facilities are exempt from these [H9900s4669a](#)

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requirements, this would clearly be an unnecessary administrative burden for the private operators of the youth facility.

Although the creation of a youth facility and its privatization were subject to controversy, since the facility is being built and will be operated by a private company, it should be given every opportunity to be operated effectively as a correctional facility. The ability to perform thorough searches of inmates is a necessary and fundamental power of a correctional facility, which must keep drugs, weapons, and other contraband out of the facility. According to testimony before the Senate Judiciary Committee by a DOC official, while body cavity searches are rare and very restricted, strip searches are conducted on a regular basis. Strip searches are routinely done after a prisoner returns from a contact visit as well as before and after any break in the bounds of security (such as for a court or hospital visit). Without the ability to perform such searches, the private operators of the youth facility will be hard-pressed to protect adequately the safety and security of either the facility's personnel or its prisoners.

Response: The privately run facility will not be prohibited from performing strip and body cavity searches if the bill is not enacted; the facility will merely be required to follow procedures outlined in statute for a strip search and to secure a search warrant before performing a body cavity search. Considering that the prisoners in the facility in question will be youths under the age of 19, perhaps it would be preferable to maintain the Code of Criminal Procedure's limitations on the ability of those in charge to perform these invasive searches.

Legislative Analyst: P. Affholter

FISCAL IMPACT

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

Fiscal Analyst: K. Firestone